

Zambia

## Electoral Commission of Zambia Act, 2016

Act 25 of 2016

Legislation as at 11 April 2019

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# Electoral Commission of Zambia Act, 2016

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## Zambia

# Electoral Commission of Zambia Act, 2016

Act 25 of 2016

*Published on 7 June 2016*

**Assented to on 6 June 2016**

**Commenced on 7 June 2016**

*[This is the version of this document from 11 April 2019.]*

*[Amended by [Electoral Commission of Zambia \(Amendment\) Act, 2019 \(Act 5 of 2019\)](#) on 11 April 2019]*

**An Act to provide for the membership, functions, operations and financial management of the Electoral Commission of Zambia; repeal and replace the Electoral Commission Act, 1996; and provide for matters connected with, or incidental to, the foregoing**

ENACTED by the Parliament of Zambia.

## Part I – Preliminary provisions

### 1. Short title

This Act may be cited as the Electoral Commission of Zambia Act, 2016.

### 2. Interpretation

In this Act, unless the context otherwise requires—

"**associate**" has the meaning assigned to it in the Anti-Corruption Act, 2012;

*[Act No. 3 of 2012]*

"**Chairperson**" means the person appointed Chairperson of the Commission under section five;

"**Chief Electoral Officer**" means the person appointed Chief Electoral Officer of the Commission under section nine;

"**Commission**" means the Electoral Commission of Zambia established under Article 229 of the Constitution;

*[Cap. 1]*

"**Electoral Commission**" means the Electoral Commission provided for under the repealed Act;

*[Cap. 17]*

"**emoluments**" has the meaning assigned to it in the Constitution;

*[Cap. 1]*

"**Emoluments Commission**" means the Emoluments Commission established under Article 232 of the Constitution;

*[Cap. 1]*

**“Examination Council of Zambia”** means the Examinations Council of Zambia established under the Examinations Council of Zambia Act;

*[Cap. 137]*

*[definition of “Examination Council of Zambia” inserted by section 2 of [Act 5 of 2019](#)]*

**“function”** has the meaning assigned to it in the Constitution;

*[Cap. 1]*

**“member”** means a person appointed as a member of the Commission under section five;

**“oath”** has the meaning assigned to it in the Constitution;

*[Cap. 1]*

**“relative”** means—

- (a) a person’s son, daughter, brother, sister, nephew, niece, parent, uncle, aunt, grandparent or cousin; and
- (b) a person’s spouse or the spouse of any of the persons mentioned in paragraph (a);

**“repealed Act”** means the Electoral Commission Act, 1996;

*[Cap. 17]*

**“School Certificate”** means the certificate awarded by the Examinations Council of Zambia to a candidate who passes such subjects, in the grade twelve examinations conducted by the Examinations Council of Zambia, as the Examinations Council of Zambia requires for the award of the certificate;

*[definition of “School Certificate” inserted by section 2 of [Act 5 of 2019](#)]*

**“State organ”** has the meaning assigned to it in the Constitution;

*[Cap. 1]*

**“superior court”** has the meaning assigned to it in the Constitution;

*[Cap. 1]*

**“Vice-Chairperson”** means the person appointed Vice-Chairperson of the Commission under section five; and

**“Zambia Qualifications Authority”** means the Zambia Qualifications Authority established under the Zambia Qualifications Authority Act, 2011.

*[Act [No. 13 of 2011](#)]*

*[definition of “Zambia Qualifications Authority” inserted by section 2 of [Act 5 of 2019](#)]*

## Part II – The Electoral Commission of Zambia

### 3. Seal of Commission

- (1) The seal of the Commission shall be such device as may be determined by the Commission and shall be kept by the Chief Electoral Officer.
- (2) The affixing of the seal shall be authenticated by the Chairperson or the Vice-Chairperson and the Chief Electoral Officer or any other person authorised in that behalf by a resolution of the Commission.
- (3) A contract or instrument which, if entered into or executed by a person not being a body corporate, would not be required to be under seal may be entered into or executed without seal on behalf

of the Commission by the Chief Electoral Officer or any other person generally or specifically authorised by the Commission in that behalf.

- (4) A document purporting to be under the seal of the Commission or issued on behalf of the Commission shall be received in evidence and shall be deemed to be so executed or issued, as the case may be, without further proof, unless the contrary is proved.

#### 4. Functions of Commission

- (1) Subject to the Constitution, the Commission shall direct, supervise and control elections in a fair and impartial manner.

*[Cap. 1]*

- (2) Without prejudice to the generality of subsection (1), the functions of the Commission are to—

- (a) apply the principles in the electoral system and process under the Electoral Process Act, 2016;

*[Act No. 35 of 2016]*

- (b) conduct the registration of voters for the purposes of an election;
- (c) prepare, publicise and maintain a register of voters;
- (d) determine the names and boundaries of constituencies and wards;
- (e) resolve disputes that are of an administrative nature, which may arise from the organisation, administration or conduct of an election;
- (f) conduct education and information programmes to promote public awareness of electoral matters;
- (g) provide information and advice to State organs on electoral matters;
- (h) conduct and promote research into electoral matters and other matters that relate to its functions; and
- (i) establish and maintain liaison and cooperation with political parties.

*[subsection (2) substituted by section 3 of Act 5 of 2019]*

- (3) The Commission may, in furtherance of its functions—

- (a) collect any information that it considers necessary for the performance of its functions under the Constitution and this Act;

*[Cap. 1]*

- (b) undertake consultations, public hearings and inquiries for purposes of performing its functions under the Constitution and this Act; and

*[Cap. 1]*

- (c) receive written or oral statements from any person or organisation for purposes of its functions under this Act.

#### 5. Composition of Commission

- (1) The Commission consists of the following full-time members appointed by the President, subject to ratification by the National Assembly:

- (a) the Chairperson;
- (b) the Vice-Chairperson; and

- (c) three other members;
- (2) A person is qualified for appointment as a member if that person—
  - (a) has a school certificate or its equivalent;
  - (b) holds a degree or an equivalent qualification, which is accredited or recognised and validated by the Zambia Qualification Authority;
  - (c) does not hold a political office; and
  - (d) has proven relevant knowledge and experience in—
    - (i) election administration and management;
    - (ii) finance;
    - (iii) governance;
    - (iv) public administration; or
    - (v) law.

*[subsection (2) substituted by section 4 of [Act 5 of 2019](#)]*

- (3) A member shall hold office for a term of seven years, and may be re-appointed for a further and final term of seven years.

*[subsection (3) substituted by section 4 of [Act 5 of 2019](#)]*

- (4) A member may resign on giving one month's notice, in writing, to the President.

*[subsection (4) substituted by section 4 of [Act 5 of 2019](#)]*

- (5) The office of a member becomes vacant if the member—
  - (a) dies;
  - (b) resigns;
  - (c) is absent without reasonable excuse, from three consecutive meetings of the Commission of which the member has had notice without the approval of the Commission;
  - (d) is adjudged bankrupt;
  - (e) is convicted of an offence under this Act or any other written law and sentenced to imprisonment for a period exceeding six months without the option of a fine; or
  - (f) is legally disqualified from performing the functions of that office.

*[subsection (5) substituted by section 4 of [Act 5 of 2019](#)]*

- (6) A member shall, on the expiration of the period for which that member is appointed, continue to hold office until a successor is appointed, but in no case shall the further period exceed four months.

*[subsection (6) substituted by section 4 of [Act 5 of 2019](#)]*

- (7) Whenever the office of a member becomes vacant before the expiry of the term of office, the President may appoint another person to be a member in place of the member who vacates the office for the unexpired term of that office.

*[subsection (7) substituted by section 4 of [Act 5 of 2019](#)]*

- (8) The President may remove a member from office for incompetence or gross misconduct.

*[subsection (8) added by section 4 of [Act 5 of 2019](#)]*

- (9) The President may initiate the removal of a member from office on—
- (a) the President's own motion; or
  - (b) receipt of a complaint by a complainant—
    - (i) acting in the complainant's own interest;
    - (ii) that is an association acting in the interest of its members;
    - (iii) who is a person acting on behalf of a complainant;
    - (iv) who is a person acting on behalf, and in the interest of a group or class of persons; or
    - (v) who is making a complaint anonymously.
- [subsection (9) added by section 4 of [Act 5 of 2019](#)]*
- (10) A complaint made under subsection (9) shall be in a prescribed manner and form.
- [subsection (10) added by section 4 of [Act 5 of 2019](#)]*
- (11) Subsection (10) shall not apply to a complaint made by a person specified in subsection (9)(b)(v).
- [subsection (11) added by section 4 of [Act 5 of 2019](#)]*
- (12) If the President considers that the question of removing a member under this Act ought to be investigated, the President shall refer the matter to the Chief Justice and suspend the member in writing, pending the outcome of the investigation.
- [subsection (12) added by section 4 of [Act 5 of 2019](#)]*
- (13) A member suspended under subsection (12) shall, on receipt of the notice of suspension, cease to perform the functions of the office of that member.
- [subsection (13) added by section 4 of [Act 5 of 2019](#)]*
- (14) The Chief Justice shall, on receipt of the matter referred to under subsection (12) appoint a tribunal which shall consist of a chairperson and at least two other members who hold or have held the office of a judge of a superior court.
- [subsection (14) added by section 4 of [Act 5 of 2019](#)]*
- (15) A Tribunal constituted under subsection (14) shall hear and determine the question of removal of the member on the grounds specified under subsection (8) within thirty days of the date of appointment of the Tribunal.
- [subsection (15) added by section 4 of [Act 5 of 2019](#)]*
- (16) The Tribunal shall, where the tribunal decides on the matter advise the Chief Justice whether the member ought to be removed from office for incompetence or gross misconduct.
- [subsection (16) added by section 4 of [Act 5 of 2019](#)]*
- (17) Where the Tribunal reports that the particulars of a complaint against a member—
- (a) are not substantiated, the President shall lift the suspension of the member and the member shall, on receipt of that decision, resume the functions of the office of that member; or
  - (b) are substantiated, the President shall remove that member from office.
- [subsection (17) added by section 4 of [Act 5 of 2019](#)]*
- (18) The proceedings under subsection (14) shall be held *in camera* and the member shall be entitled to appear, be heard and be represented by a legal practitioner or an authorised representative.
- [subsection (18) added by section 4 of [Act 5 of 2019](#)]*

## 6. Proceedings of Commission

- (1) Subject to the other provisions of this Act, the Commission may regulate its own procedure.
- (2) The Commission shall meet for the transaction of business at least once in a month at such places and times as the Commission may determine.  
*[subsection (2) amended by section 5(a) of [Act 5 of 2019](#)]*
- (3) A meeting of the Commission may be called by the Chairperson upon giving notice of not less than fourteen days and shall be called by the Chairperson if one-third or more of the members so request in writing, except that if the urgency of any particular matter does not permit the giving of such notice, a special meeting may be called upon giving a shorter notice.
- (4) Three members shall form a quorum at a meeting of the Commission.  
*[subsection (4) amended by section 5(b) of [Act 5 of 2019](#)]*
- (5) There shall preside at a meeting of the Commission—
  - (a) the Chairperson;
  - (b) in the absence of the Chairperson, the Vice-Chairperson; and
  - (c) in the absence of the Chairperson and the Vice-Chairperson, such other member as the members present may elect for the purposes of that meeting.
- (6) A decision of the Commission on any question shall be by a majority of the members present and voting at the meeting and in the event of an equality of votes, the person presiding at the meeting shall have a casting vote in addition to that person's deliberative vote.
- (7) *[subsection (7) deleted by section 5(c) of [Act 5 of 2019](#)]*
- (8) The Commission may invite a person, whose presence is in its opinion desirable, to attend and to participate in the deliberations of the meeting of the Commission, but that person shall have no vote.
- (9) The validity of any proceedings, acts or decisions of the Commission shall not be affected by any vacancy in the membership of the Commission or by any defect in the appointment of any member or by reason that any person not entitled to do so took part in the proceedings.
- (10) The Commission shall cause minutes to be kept of the proceedings of every meeting of the Commission and every meeting of any committee of the Commission.

## 7. Committees

- (1) The Commission may, for the purpose of performing its functions under this Act, establish such committees as it considers necessary and delegate to any of those committees such of its functions as it considers fit.
- (2) The Commission may appoint as members of a committee, persons who are or are not members, except that at least one member of a committee shall be a member.
- (3) A person serving as a member of a committee shall hold office for such period as the Commission may determine.
- (4) Subject to any specific or general direction of the Commission, a committee may regulate its own procedure.



## 8. Emoluments

A member of the Commission or any committee of the Commission shall be paid such emoluments as the Emoluments Commission may determine.

## 9. Chief Electoral Officer and other staff

- (1) There shall be a Chief Electoral Officer of the Commission who shall be appointed by the Commission.
- (2) The Chief Electoral Officer shall be the chief executive officer of the Commission, and subject to the general and specific directions of the Commission shall—
  - (a) be responsible for the day-to-day administration and management of the Commission;
  - (b) be an *ex-officio* member of the Commission; and
  - (c) exercise the functions conferred upon the Chief Electoral Officer by, or under, this Act.
- (3) The Commission shall, on such terms and conditions as it may determine, appoint such other staff and officers of the Commission as are necessary for purposes of this Act.

## 10. Disclosure of interest

- (1) A person who is present at a meeting of the Commission or any committee of the Commission at which any matter is the subject of consideration, and in which matter that person or that persons relative or associate is directly or indirectly interested in a private capacity shall, as soon as is practicable after the commencement of the meeting, declare such interest and shall not, unless the Commission or the committee otherwise directs, take part in any consideration or discussion of, or vote on, any question relating to that matter.
- (3) A disclosure of interest made under subsection (1) shall be recorded in the minutes of the meeting at which it is made.

*[Please note: numbering as in original.]*

- (3) A person who contravenes subsection (1) commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

## 11. Prohibition of publication or disclosure of information to unauthorised persons

- (1) A person shall not, without the consent, in writing, given by or on behalf of the Commission, publish or disclose to an unauthorised person, otherwise than in the course of duties of that person, the contents of a document, communication or information whatsoever, which relates to or which has come to the knowledge of that person in the course of that person's duties under this Act.
- (2) A person who contravenes subsection (1) commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.
- (3) A person who, having any information which to the knowledge of that person has been published or disclosed in contravention of subsection (1), unlawfully publishes or communicates the information to another person, commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

## 12. Oath on appointment

- (1) A member of the Commission shall, on appointment, take an oath in accordance with the Official Oaths Act.

*[Cap. 5]*

- (2) The Chief Electoral Officer and the officers and staff of the Commission shall, on appointment, take an oath in accordance with the Official Oaths Act.

*[Cap. 5]*

## 13. Immunity

An action or other proceeding shall not lie or be instituted against a member of the Commission, a member of a committee of the Commission or a member of staff of the Commission for, or in respect of, an act or thing done or omitted to be done in good faith in the exercise or performance, or purported exercise or performance, of any of the functions conferred under this Act.

## Part III – Financial provisions

## 14. Funds of Commission

- (1) The funds of the Commission shall consist of such monies as may—
  - (a) be appropriated to the Commission by Parliament;
  - (b) be paid to the Commission by way of grants or donations; or
  - (c) otherwise vest in or accrue to the Commission.
- (2) The Commission may, subject to the approval of the President—
  - (a) accept monies by way of grants or donations from any source within or outside Zambia; and
  - (b) raise by way of loans or otherwise, such monies as it may require for the discharge of its functions.
- (3) There shall be paid from the funds of the Commission
  - (a) the emoluments of the members and staff of the Commission;
  - (b) such travelling and other allowances for the members and the members of any committee when engaged on the business of the Commission, at such rates as the Emoluments Commission may approve; and
  - (c) any other expenses incurred by the Commission in the performance of its functions under this Act.
- (4) The Commission may invest in a manner that it considers appropriate funds of the Commission that it does not immediately require for the performance of its functions.

*[subsection (4) substituted by section 6 of [Act 5 of 2019](#)]*

## 15. Financial year

The financial year of the Commission shall be a period of twelve months ending on 31st December in each year.

## 16. Accounts and audit

- (1) The Commission shall cause to be kept proper books of accounts and other records relating to its accounts.
- (2) The accounts of the Commission shall be audited annually by the Auditor-General or an auditor appointed by the Auditor-General.
- (3) The Commission may appoint an external auditor to conduct a specified audit.  
*[subsection (3) inserted by section 7(a) of [Act 5 of 2019](#)]*
- (4) The Auditor-General's fees shall be paid by the Commission.  
*[subsection (4), previously subsection (3) renumbered by section 7(b) of [Act 5 of 2019](#)]*

## 17. Annual report

- (1) As soon as practicable, but not later than ninety days after the end of the financial year, the Commission shall submit to the President a report concerning its activities during the financial year.
- (2) The report referred to in subsection (1) shall include information on the financial affairs of the Commission and there shall be appended to the report—
  - (a) an audited statement of financial position;
  - (b) an audited statement of comprehensive income; and
  - (c) such other information as the President may require.
- (3) The Minister responsible for finance shall cause to be prepared an annual statement of the income and expenditure of the Commission to be laid before the National Assembly.

## Part IV – General provisions

## 18. General offences

- (1) A person shall not—
  - (a) knowingly make, or cause to be made, to the Commission, a false testimony or false report in any material particular on a matter under investigation;
  - (b) knowingly mislead the Commission, a member, an officer or staff of the Commission by giving any false information or statement or making a false allegation;
  - (c) obstruct, assault, insult, hinder, delay or impersonate an officer or staff of the Commission in the lawful exercise of the powers conferred on the officer or staff of the Commission under this Act;
  - (d) refuse or fail, without reasonable cause, to give the Commission on request, a document or information required for purposes of this Act;
  - (e) unlawfully influence a decision of the Commission or coerce the Commission to make a decision in favour of that person;
  - (f) fail to comply with a lawful summon, order or directive of the Commission or an officer of the Commission under this Act; or
  - (g) destroy anything or prevent the seizure of any property or document or securing of the property or document.

- (2) A person who contravenes subsection (1) commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or imprisonment for a term not exceeding two years, or to both.

## 19. Regulations

- (1) The Commission may, by statutory instrument, make regulations for the better carrying out of the provisions of this Act.
- (2) Without prejudice to the generality of subsection (1), the Commission may make regulations for—
  - (a) the appointment, including the power to confirm appointments, of persons to an office in respect of which it is charged with responsibility under this Act;
  - (b) the disciplinary control of persons holding or acting in an office in respect of which it is charged with responsibility under this Act;
  - (c) the termination of appointments and the removal of persons from an office, in respect of which it is charged with responsibility under this Act;
  - (d) the practice and procedure of the Commission in the exercise of its functions under this Act; and
  - (e) the delegation of its functions.

## 20. Repeal of [Cap. 17](#)

The Electoral Commission Act, 1996, is repealed.

## 21. Transitional provisions

- (1) On or after the commencement of this Act, there shall be transferred to, vest in and subsist against the Commission by virtue of this Act and without further assurance, all assets, rights, liabilities and obligations which immediately before that date were the assets, rights, liabilities and obligations of the Electoral Commission.
- (2) Subject to subsection (1), every deed, bond and agreement, other than an agreement for personal service, to which the Electoral Commission was a party immediately before the commencement of this Act whether or not of such a nature that rights, liabilities and obligations could be assigned shall, unless its subject matter or terms make it impossible that it should have effect as modified, as provided under this subsection, have effect as if—
  - (a) the Commission had been party to it;
  - (b) for any reference to the Electoral Commission there was submitted, with respect to anything falling to be done or after the commencement of this Act, a reference to the Commission; or
  - (c) for any reference to an officer of the Electoral Commission, not being a party to it and beneficially interested, there were substituted, as respects anything falling to be done on or after the commencement of this Act a reference to such officer of the Commission as it shall designate.
- (3) Where under this Act, any assets, rights, liabilities and obligations of the Electoral Commission are deemed to be transferred to the Commission in respect of which a written law provides for registration, the Commission shall make an application, in writing, to the appropriate registration authority for registration of the transfer.
- (4) The registration authority, referred to in subsection (3), shall make such entries in the appropriate register as shall give effect to the transfer and, where applicable, issue to the transferer concerned a certificate of title in respect of the property or make necessary amendments to the register and

shall endorse the deeds relating to the title, right or obligation concerned and no registration fees or other duties shall be payable in respect of the transaction.

## **22. Legal proceedings**

- (1) Any legal proceedings or application of the Electoral Commission pending immediately before the commencement of this Act by or against the Electoral Commission may be continued by or against the Commission.
- (2) After the commencement of this Act, proceedings in respect of any right, liability or obligation which was vested in, held, enjoyed, incurred or suffered by the Electoral Commission may be instituted by or against the Commission.

## **23. Staff of Electoral Commission**

- (1) A person who, before the commencement of this Act, was an employee of the Electoral Commission shall be transferred to the service of the Commission as an employee of the Commission as if employed under this Act.
- (2) The service of the persons referred to in subsection (1) shall be treated as continuous service.
- (3) Nothing in this Act affects the rights and liabilities of any person employed or appointed by the Electoral Commission before the commencement of this Act.