

REPUBLIC OF SOUTH AFRICA

ELECTORAL AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 76); explanatory summary of
Bill published in Government Gazette No. 36626 of 1 July 2013)
(The English text is the official text of the Bill)*

(MINISTER OF HOME AFFAIRS)

[B 22—2013]

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GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Electoral Act, 1998, so as to amend and insert certain definitions; to revise provisions relating to registration as a voter; to revise provisions relating to special votes in election for the National Assembly and provincial legislatures and the procedure related thereto; to revise provisions relating to the number of party agents at a voting station; to correct certain important technical aspects in the text of the Act; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 73 of 1998

- 1.** Section 1 of the Electoral Act, 1998 (hereinafter referred to as the principal Act), is hereby amended— 5
- (a) by the substitution for the definition of “identity document” of the following definition:
- “**‘identity document’** means an identity [document issued after 1 July 1986, in terms of section 8 of the Identification Act, 1986 (Act No. 72 of 1986), or a temporary identity certificate] card issued in terms of the Identification Act, 1997 (Act No. 68 of 1997);” and 10
- (b) by the insertion after the definition of “serve” of the following definition:
- “**‘South African passport’** means a passport issued in terms of the South African Passports and Travel Documents Act, 1994 (Act No. 4 of 1994);”. 15

Amendment of section 6 of Act 73 of 1998, as inserted by section 2 of Act 34 of 2003

- 2.** Section 6 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:
- “(1) Any South African citizen in possession of an identity document may apply for registration as a voter[.]: Provided that where that citizen is ordinarily resident outside the Republic, he or she must in addition to the identity document produce a valid South African passport.” 20

Amendment of section 7 of Act 73 of 1998, as amended by section 93 of Act 27 of 2000 and section 3 of Act 34 of 2003

3. Section 7 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:
 “(1) A person applying for registration as a voter must do so in person in the prescribed manner.”; and
- (b) by the deletion of subsection (2).

Amendment of section 8 of Act 73 of 1998, as substituted by section 4 of Act 34 of 2003

4. Section 8 of the principal Act is hereby amended— 10

- (a) by the deletion in subsection (2) of paragraph (f); and
- (b) by the substitution for subsection (3) of the following subsection:
 “(3) A person’s name must be entered in the voters’ roll only for the voting district in which that person is ordinarily resident and for no other voting district[.]: Provided that where that person is ordinarily resident outside the Republic, his or her name must be entered in a segment of the voters’ roll created for that purpose.” 15

Amendment of section 24B of Act 73 of 1998, as inserted by section 7 of Act 34 of 2003

5. Section 24B of the principal Act is hereby amended— 20

- (a) by the substitution for subsection (1) of the following subsection:
 “(1) In an election for the National Assembly or a provincial legislature, a person who on election day is in prison [**and not serving a sentence of imprisonment without the option of a fine**] and whose name appears on the voters’ roll for another voting district, is deemed for that election day to have been registered by his or her name having been entered on the voters’ roll for the voting district in which he or she is in prison.”; and
- (b) by the deletion of subsection (2).

Substitution of section 33 of Act 73 of 1998, as amended by section 9 of Act 34 of 2003 and section 2 of Act 40 of 2003 30

6. The following section is hereby substituted for section 33 of the principal Act:

“Special votes in election for National Assembly

- 33.** (1) In an election for the National Assembly, the Commission must allow a person to apply for and cast a special vote, prior to election day, if, on election day, that person cannot vote at a voting station in a voting district in which he or she is registered as a voter, due to his or her— 35
- (a) physical infirmity or disability, or pregnancy;
 - (b) absence from that voting district while serving as an officer in the election; or
 - (c) being on duty as a member of the security services in connection with the election. 40
- (2) In an election for the National Assembly, the Commission must allow a person to apply for and cast a special vote, prior to election day, in the voting district in which that person is registered if he or she cannot vote in that voting district on election day, due to his or her absence from that voting district. 45
- (3) In an election for the National Assembly, the Commission must allow a person to apply for and cast a special vote, prior to election day, in the voting district in which that person is registered if he or she cannot vote in that voting district on election day, due to his or her intended absence from the Republic, if that person notifies the Commission within 15 days after the proclamation of the date of the election, of his or her intention to vote. 50

(4) In an election for the National Assembly, the Commission must allow a person, who is outside the Republic, to apply for and cast a special vote if that person's name appears on the segment of the voters' roll for persons who are in the Republic, if that person notifies the Commission within 15 days after the proclamation of the date of the election of his or her intention to vote outside the Republic. 5

(5) In an election for the National Assembly, the Commission must allow a person to apply for and cast a special vote if that person's name appears on the segment of the voters' roll for persons ordinarily resident at a place outside the Republic, if that person notifies the Commission within 15 days after the proclamation of the date of the election of his or her intention to vote. 10

(6) Votes cast in accordance with subsections (4) and (5) shall be counted as votes cast nationally. 15

(7) The Commission must prescribe— 15

- (a) the procedures for applying for special votes in an election for the National Assembly; and
- (b) the procedure, consistent in principle with Chapter 4, for the casting and counting of special votes.”. 20

Insertion of section 33A in Act 73 of 1998 20

7. The following section is hereby inserted after section 33 of the principal Act:

“Special votes in election for provincial legislatures

33A. (1) In an election for the provincial legislatures, the Commission must allow a person to apply for and cast a special vote, prior to election day, if that person cannot vote at a voting station in the voting district in which he or she is registered, due to his or her— 25

- (a) physical infirmity or disability, or pregnancy;
- (b) absence from that voting district while serving as an officer in the election; or
- (c) being on duty as a member of the security services in connection with the election. 30

(2) In an election for the provincial legislatures, the Commission must allow a person to apply for and cast a special vote, prior to election day, in the voting district in which that person is registered, if that person cannot vote in that voting district on election day, due to his or her absence from that voting district on election day. 35

(3) In an election for the provincial legislatures, the Commission must allow a person to apply for and cast a special vote, prior to election day, in the voting district in which that person is registered if he or she cannot vote in that voting district on election day, due to his or her intended absence from the Republic, if that person notifies the Commission within 15 days after the proclamation of the date of the election, of his or her intention to vote. 40

(4) The Commission must prescribe— 45

- (a) the procedure for applying for special votes in an election for the provincial legislatures; and
- (b) the procedure, consistent in principle with Chapter 4, for the casting and counting of special votes.”. 50

Repeal of section 34 of Act 73 of 1998

8. Section 34 of the principal Act is hereby repealed. 50

Amendment of section 57 of Act 73 of 1998

9. Section 57 of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) If the Commission is unable to determine and declare the result of an election within the seven-day period required by subsection (2)(c), the Commission must apply to the Electoral Court for an extension of that period.”. 5

Amendment of section 58 of Act 73 of 1998

10. Section 58 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) two party agents for each voting station or, if voting or counting at a voting station takes place in more than one room or separately enclosed area, two party agents in respect of each room or area; and” 10

Short title

11. This Act is called the Electoral Amendment Act, 2013.

MEMORANDUM ON THE OBJECTS OF THE ELECTORAL AMENDMENT BILL, 2013

1. OBJECTS OF BILL

The main objects of the Electoral Amendment Bill (“the Bill”), are to amend the Electoral Act, 1998 (Act No. 73 of 1998) (“the Act”), in order to amend and insert certain definitions, to revise provisions relating to registration as a voter, to revise provisions relating to special votes in election for the National Assembly and provincial legislatures and the procedure related thereto, to revise provisions relating to the number of party agents at a voting station, to correct certain important technical aspects in the text of the Act, and to provide for matters connected therewith.

2. DISCUSSION

The Bill introduces the amendments as follows:

- 2.1 Clause 1** amends section 1 of the Act in order to effect certain technical amendments and to insert a definition of “South African passport”.
- 2.2 Clause 2** amends section 6 of the Act to provide for the production of a valid South African passport and an identity document by any person who is ordinarily resident outside the Republic when registering as a voter.
- 2.3 Clause 3** amends section 7 of the Act to provide that an application for registration as a voter must be made in person.
- 2.4 Clause 3** further amends section 7 of the Act by the deletion of subsection (2).
- 2.5 Clause 4** amends section 8 of the Act to provide for the deletion of paragraph (f) of subsection (2) which provides that the chief electoral officer may not register a person as a voter if that person is serving a sentence of imprisonment without the option of a fine. This clause gives effect to the decision of the Constitutional Court in **Minister of Home Affairs v National Institute for Crime Prevention and the rehabilitation of offenders (NICRO) & Others (CCT 03/04)**.
- 2.6 Clause 4** further amends section 8 of the Act to provide for the entering of the name of a person who is ordinarily resident outside the Republic in the segment of the voters’ roll created for the purpose of persons who are to cast their votes outside the Republic.
- 2.7 Clause 5** amends section 24B of the Act in order to substitute subsection (1) to provide that a person who on election day is in prison and whose name appears on the voters’ roll for another voting district shall be deemed for that election day to have been registered on the voters’ roll for the voting district in which he or she is in prison.
- 2.8 Clause 5** further provides for the deletion of subsection (2) which made provision that a person who is in prison may only vote if he or she is not serving a sentence of imprisonment without the option of a fine.
- 2.9 Clause 6** substitutes section 33 of the Act in order to provide for the Commission to allow a person to apply for and cast a special vote, prior to election day, in the election for the National Assembly, if that person cannot vote at a voting station in the voting district in which he or she is registered as a voter due to that person’s physical infirmity or disability or pregnancy, absence from his or her voting district whilst serving as an officer in the election or being on duty as a member of the security services in connection with the election or absence from the Republic. This clause gives effect to the

decision of the Constitutional Court in **Richter v Minister of Home Affairs and Others, 2009 (3) SA 615 (CC)**.

2.10 Clause 7 inserts section 33A into the Act in order to provide for the Commission to allow a person to apply for and cast a special vote, prior to election day, in the election for the provincial legislatures, if that person cannot vote at a voting station in the voting district in which he or she is registered as a voter due to that person's physical infirmity or disability or pregnancy, absence from his or her voting district whilst serving as an officer in the election or being on duty as a member of the security services in connection with the election or intended absence from the Republic.

2.11 Clause 8 repeals section 34 of the Act which provides for the declaration of votes in certain circumstances.

2.12 Clause 9 amends section 57 of the Act in order to effect certain technical amendments.

2.13 Clause 10 amends section 58 of the Act in order to make provision for sufficient agents, if voting or counting at a voting station takes place in more than one room or separately enclosed area, i.e., two agents in respect of each area or room, in a case of a party contesting an election.

2.14 Clause 11 provides for the short title.

3. INSTITUTIONS CONSULTED

The National Party Liaison Committee and members of the public.

4. FINANCIAL IMPLICATIONS FOR STATE

There will be substantial financial implications relating to the registration of voters outside the Republic and the administration of special votes both inside and outside the Republic.

5. PARLIAMENTARY PROCEDURE

5.1 The State Law Advisers and the Department of Home Affairs are of the opinion that the Bill must be dealt with in accordance with the procedure established by section 76 of the Constitution since it contains no provision to which the procedure set out in section 74 or 75 of the Constitution applies.

5.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.

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