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## Senate (Elections) Act

Act 48 of 1967

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# eSwatini

## Senate (Elections) Act Act 48 of 1967

Commenced on 7 April 1967

*[This is the version of this document at 1 December 1998.]*

An Act to provide for Senate elections and related matters.

### Part I – General

#### 1.

In these regulations—

"**absolute majority**" means more than one-half of the value of all the votes for the time being counted in favour of candidates, no account being taken of the value of the exhausted votes given in favour of an excluded candidate;

"**approved form**" means form approved by the returning officer;

"**by-election**" means an election to fill a casual vacancy or vacancies occurring at any time other than at a full election;

"**continuing candidates**" mean candidates not elected or not excluded from the poll at any given time;

"**day of nomination**" shall be the day of first meeting of the House of Assembly referred to in [section 5](#) in the case of a full election, or the date specified in the notice published under the provisions of [section 33](#) in the case of a by-election;

"**exhausted papers**" mean ballot papers on which no further preference is recorded for a continuing candidate, provided that a paper shall also become exhausted in any case in which—

- (a) the name of two or more candidates, whether continuing or not, are marked with the same figure and are next in order of preference, or
- (b) the name of the candidate next in order of preference, whether continuing or not, is marked—
  - (i) by a figure not following consecutively after some other figure on the ballot papers, or
  - (ii) by two or more figures;

"**first preference**" means the figure 1 set opposite the name of any candidate; "second preference" similarly means the figure 2; "third preference", the figure 3; and so on;

"**full election**" means an election of all Senators in consequence of the dissolution of the Senate constituted in terms of section 37 of the Constitution, as provided in section 59 of the Constitution;

"**Minister**" means the Prime Minister;

"**original votes**" in regard to any candidate mean the votes derived from ballot papers on which a first preference is recorded for such candidate;

"**President**" means person elected in terms of the Constitution as President or Acting President of the Senate, and where no such President has been elected, the Clerk to the Senate;

"**Speaker**" means person elected in terms of the Constitution as Speaker or Acting Speaker of the House of Assembly;

"**surplus**" means the number by which the value of the votes of any candidate, original and transferred, exceeds the quota;

"**transferred votes**" in regard to any candidate means votes, the value or part of the value of which is credited to such candidate, and which are derived from ballot papers on which a second or subsequent preference is recorded for such candidate;

"**unexhausted papers**" mean ballot papers on which a further preference is recorded for a continuing candidate.

**2.**

- (1) The Clerk to the House of Assembly shall act as returning officer, and shall, subject to this Act, do all things necessary for the conduct of the election.
- (2) The Minister may designate a public officer to be an assistant returning officer, who shall, subject to this Act, carry out such duties as may be assigned to him by the returning officer.

**3.**

For the purposes of an election under this Act, two assessors, not being members, shall be nominated (one by the President and one by the Speaker), who shall assist and advise the returning officer in his duties both in respect of the receiving of nominations and the conduct of the election:

Provided that, for the purpose of the first full election, the aforesaid assessors shall be nominated by the Speaker.

**4.**

Before entering upon their duties, the returning officer, assistant returning officer and the assessors shall be required to make oath or affirmation before a judge or magistrate that they will faithfully and impartially discharge the duties of their offices according to this Act or such other law as may be lawfully made in regard to the election of Senators, and that they will not disclose any facts or information coming to their knowledge in the performance of their duties under the law.

## **Part II – Full election**

**5.**

When the House of Assembly first meets after any general election and as soon as it shall have elected a person to be Speaker in terms of section 48 of the Constitution, it shall immediately proceed to the business of the election of Senators.

**6.**

- (1) On the day of nomination, the Speaker shall call for nominations of candidates for election to fill the vacancies.
- (2) Every candidate for election shall be proposed by a member and seconded by another member.
- (3) Every nomination shall be made to the returning officer and shall be on the approved form S.E.1, hereinafter referred to as a "nomination paper".
- (4) The returning officer shall supply blank nomination papers to any member on application.
- (5) A nomination paper shall include the name of only candidate, and no member shall sign more than one nomination paper as a proposer.

- (6) In the event of any member signing more than one nomination paper as a proposer, every nomination paper so signed shall be invalid and shall be rejected.
- (7)
  - (a) Every candidate shall, for the purpose of accepting nomination, sign the nomination paper relating to himself, but shall not otherwise sign such nomination paper.
  - (b) Every proposer, seconder and candidate shall sign the nomination paper in the presence of either the returning officer, the assistant returning officer or the Clerk to the Senate, who shall also sign the nomination paper as witness and state thereon his office and the date of signing:

Provided that a candidate may by letter or telegram, addressed to the returning officer, notify his acceptance of nomination, and provided further that if such letter or telegram be received by the returning officer before the adjournment of the sitting at which the nomination is made, it shall be accepted in place of the candidate's signature on the nomination paper:

Provided further that the Speaker may, in his discretion, adjourn the sitting for a period of not less than twenty-four hours to allow a candidate's consent to nomination to be received.
- (8) Before witnessing any signature as aforesaid, the returning officer, assistant returning officer or Clerk to the Senate, as the case may be, shall satisfy himself as to the identity of the signatory and draw the attention of the signatory to the provisions of this regulation and of sections 38 to 44, inclusive, of the Constitution.

## 7.

- (1) When every member present and desiring to nominate a candidate has done so, the Speaker shall adjourn the sitting.
- (2) The returning officer shall thereupon consider all nominations received by him and shall, after consultation with the assessors, reject all nomination papers not made in accordance with these regulations.

## 8.

- (1) The assessors shall furnish to the returning officer, for transmission to the Speaker, a certificate stating whether or not they are satisfied that the nominations are in accordance with these regulations.
- (2) In the case of disagreement between the returning officer and the assessors, the Speaker shall inspect the nomination papers in dispute, and his decision on the point shall be final.

## 9.

If the number of candidates duly nominated is less than the number of vacancies to be filled, the returning officer shall notify the fact to the Speaker, who shall so inform the members at the next sitting and call for further nominations to be made at such sitting.

## 10.

- (1) If, after further nominations have been called for as provided in [section 9](#), the number of candidates duly nominated is still less than the number of vacancies to be filled, the returning officer shall declare the candidates so nominated to be duly elected and shall immediately thereafter notify the Speaker of the names of the persons declared duly elected, and upon being so notified the Speaker shall inform the members and the President accordingly, and cause a notice containing the full names of the persons declared elected and the date on which they were declared elected to be published in the *Gazette*.

- (2) The remaining vacancies shall be regarded as casual vacancies and shall be filled as provided in Part IV.

#### 11.

If the number of candidates duly nominated is equal to the number of vacancies to be filled, the returning officer shall declare the candidates so nominated to be duly elected, and shall immediately thereafter notify the Speaker of the names of the persons declared duly elected, and upon being so notified the Speaker shall inform the President and, at the next sitting of the House of Assembly the members, of the names of the persons declared duly elected, and cause a notice containing the full names of the persons declared elected and the date on which they were declared elected to be published in the *Gazette*.

#### 12.

If a duly nominated candidate dies before the commencement of the sitting at which the election is to proceed, as provided in [section 13\(2\)](#), the Speaker shall, upon being satisfied of the fact of death, so inform the members at the commencement of such sitting and call for further nominations to be made at such sitting.

#### 13.

- (1) If the number of valid nominations received exceeds the number of vacancies to be filled, the returning officer shall make a return to the Speaker showing the names, addresses and occupations of the candidates who have been duly nominated, together with the names of the members who have nominated them.
- (2) The Speaker shall, at the next sitting, being a day not later than seven days after the date of nomination, announce the names of the candidates duly nominated, and thereupon shall adjourn the sitting for not more than four hours and on resumption of the sitting the election shall proceed in the manner hereinafter prescribed.

#### 14.

Each member present shall vote in person and no member shall be allowed to vote by proxy.

#### 15.

- (1) The returning officer, having ascertained that the person desiring to vote is entitled to do so, shall enter such person's name upon the counterfoil in the ballot paper book.
- (2) He shall then tear out the ballot paper corresponding to that counterfoil, and having marked the ballot paper on both sides with the official mark provided for the purpose, shall hand it to the member.
- (3) Every ballot paper shall be in the approved form S.E.2., and there shall be typed or printed on every ballot paper, in alphabetical order, the full names of all the duly nominated candidates at the election and their addresses and occupations.
- (4) When the member has received the ballot paper, he shall take it to his seat and shall there signify in the manner prescribed in [section 16](#) for whom he desires to vote.
- (5) The member shall then fold the ballot paper so that the official mark is visible, and having held up the ballot paper so that the returning officer can recognize the official mark, shall drop the ballot paper in the ballot box placed in front of the returning officer.
- (6) If a member inadvertently spoils a ballot paper, he may return it to the returning officer who shall, if satisfied as to such inadvertence, give him another paper and retain the spoiled paper, and such spoiled paper shall be immediately cancelled and the fact of such cancellation shall be noted upon the counterfoil.



**16.**

- (1) Every member shall have one vote only.
- (2) A member in giving his vote—
  - (a) must place on his ballot paper the figure 1 in the square opposite the name of the candidate for whom he votes;
  - (b) may in addition place on his ballot paper the figure 2 or the figures 2 and 3, or 2, 3 and 4, and so on, in the squares opposite the respective names of other candidates in the order of his preference.

**17.**

A ballot paper shall be invalid—

- (a) upon which a member signs his name or writes any thing or makes any mark by which it becomes recognizable; or
- (b) which does not bear the official mark; or
- (a) on which the figure 1 is not marked; or
- (d) on which the figure 1 is set opposite the name of more than one candidate; or
- (e) on which the figure 1 and some other figure is set opposite the name of the same candidate; or
- (f) which is unmarked or void for uncertainty.

**18.**

- (1) When the result of the election has been ascertained in the manner prescribed in Part III, the returning officer shall furnish the Speaker with the names of the persons declared elected in the order of their election, and the dates in which they were declared elected, and he shall also transmit to the Speaker a complete return signed by himself showing the various steps of the election as well as the result thereof.
- (2) If either of the assessors is for any reason dissatisfied with the conduct of the election, he shall report his opinion with the reasons therefor in writing to the Speaker who may, if he considers it necessary, order a recount to be made, in which case the returning officer shall act accordingly.
- (3) The returning officer shall transmit to the Speaker separate sealed packets containing the nomination papers, the used ballot papers, and the counterfoils which shall be retained for a year and then be destroyed.
- (4) The packets of used ballot papers and counterfoils shall not be opened except under an order of the High Court.

**19.**

When the names of the persons declared duly elected have been received by the Speaker, he shall inform the members and the President accordingly and shall cause a notice containing the full names of the persons declared elected and the date on which they were declared elected to be published in the *Gazette*.

### Part III – Counting of votes

#### 20.

For the purpose of facilitating the processes prescribed by these regulations, each valid ballot paper shall be deemed to be of the value of one hundred.

#### 21.

In carrying out these regulations, the returning officer shall—

- (a) disregard all fractions;
- (b) ignore all preferences recorded for candidates already elected or excluded from the poll.

#### 22. Where one person only has to be elected

- (1) The ballot papers shall be examined and the returning officer, after rejecting any invalid ballot papers, shall divide the remaining papers into parcels according to the first preferences recorded for each candidate.
- (2) He shall then count the number of papers in each parcel.
- (3) If any candidate obtains an absolute majority of votes he shall be declared elected.
- (4) If no candidate obtains an absolute majority, the returning officer shall exclude from the poll the candidate with the smallest value of votes, by examining his papers and transferring to other candidates the unexhausted papers according to the next preference recorded thereon; the returning officer shall in each case add the value of the votes so transferred to the total value of the votes of the candidate to whom the transfer is made.
- (5) Until some candidate obtains an absolute majority, the returning officer shall in the same manner as directed by subsection (4) exclude from the poll the candidates not previously excluded, one after another, the candidate with the smallest value of votes, original or transferred, being always first excluded.
- (6) A candidate who as a result of any operations prescribed by the preceding paragraphs of this section obtains an absolute majority shall be declared elected.
- (7) If at any time two or more candidates, one of whom ought to be excluded, have an equal value of votes, the returning officer shall decide, according to the terms of [section 32](#), which of them shall first be excluded.

#### 23. When more than one person has to be elected

- (1) The ballot papers shall be examined and the returning officer, after rejecting any invalid ballot papers, shall divide the remaining papers into parcels according to first preferences recorded for each candidate.
- (2) He shall then count the number of papers in each parcel.

#### 24.

The returning officer shall then add together the values of the papers in all the parcels and divide the total by a number exceeding by one the number of vacancies to be filled, and the result increased by one shall be the number sufficient to secure the return of a candidate, herein called the "quota".

**25.**

If at any time under this Act a number of candidates equal to the number of persons to be elected has obtained the quota, such candidates shall be declared elected, and no further steps shall be taken.

**26.**

- (1) Any candidate the value of whose parcel, on the first preference being counted, is equal to or greater than the quota shall be declared elected.
- (2) If the value of the papers in any such parcel is equal to the quota, the papers shall be set aside as finally dealt with.
- (3) If the value of the papers in any such parcel is greater than the quota, the surplus shall be transferred to the continuing candidates indicated on the ballot papers as next in the order of the voters' preference in the manner prescribed in [section 27](#).

**27.**

- (1) If and whenever, as the result of any operation prescribed by this Act, a candidate has a surplus, that surplus shall be transferred in accordance with the provisions of this section.
- (2) If more than one candidate has a surplus, the largest surplus shall be dealt with first and the others in descending order of magnitude:  
  
Provided that every surplus arising on the first count of votes shall be dealt with before those arising on the second count, and so on.
- (3) Where two or more surpluses are equal, the returning officer shall decide, according to the terms of [section 32](#), which shall first be dealt with.
- (4) If the surplus of any candidate to be transferred arises from original votes only, the returning officer shall examine all the papers in the parcel belonging to the candidate whose surplus is to be transferred and divide the unexhausted papers into sub-parcels according to the next preference recorded thereon.
- (5) He shall also make a separate sub-parcel of the exhausted papers.
- (6) He shall ascertain the value of the papers in each sub-parcel and of all the unexhausted papers.
- (7) If the value of the unexhausted papers is equal to, or less than, the surplus he shall transfer all the unexhausted papers at the value at which they were received by the candidate whose surplus is being transferred.
- (8) If the value of the unexhausted papers is greater than the surplus he shall transfer the sub-parcels of unexhausted papers, and the value at which each paper shall be transferred shall be ascertained by dividing the surplus by the total number of unexhausted papers.
- (9) If the surplus of any candidate to be transferred arises from transferred as well as original votes, the returning officer shall re-examine all the papers in the sub-parcel last transferred to the candidate and divide the unexhausted papers into sub-parcels according to the next preference recorded thereon.
- (10) He shall thereupon deal with the sub-parcels in the same manner as is provided in the case of the sub-parcels referred to subsections (4) to (8).
- (11) The papers transferred to each candidate shall be added in the form of a sub-parcel to the papers already belonging to such candidate.
- (12) All papers in the parcel or sub-parcels of an elected candidate not transferred under this section shall be set aside as finally dealt with.

**28.**

- (1) If, after all surpluses have been transferred, as hereinbefore directed, less than the number of candidates required has been elected, the returning officer shall exclude from the poll the candidate lowest on the poll and shall distribute his unexhausted papers among the continuing candidates according to the next preferences recorded thereon; any exhausted papers shall be set aside as finally dealt with.
- (2) The papers containing original votes of an excluded candidate shall first be transferred, the transfer value of each paper being one hundred.
- (3) The papers containing transferred votes of an excluded candidate shall then be transferred in the order of the transfers in which and at the value at which he obtained them.
- (4) Each of such transfers shall be deemed to be a separate transfer.
- (5) The process directed by this section shall be repeated on the successive exclusions one after another of the candidate lowest on the poll until the last vacancy is filled either by the election of a candidate with the quota or as hereinafter provided.

**29.**

If, as the result of a transfer of papers under this Act, the value of the votes obtained by a candidate is equal to, or greater than, the quota, the transfer then proceeding shall be completed, but no further papers shall be transferred to him.

**30.**

- (1) If, after the completion of any transfer under this Act, the value of the votes of any candidate shall be equal to or greater than quota, he shall be declared elected.
- (2) If the value of the votes of any such candidate shall be equal to the quota, the whole of the papers on which such votes are recorded shall be set aside as finally dealt with.
- (3) If the value of the votes of any such candidate shall be greater than the quota, his surplus shall thereupon be distributed in the manner hereinbefore provided before the exclusion of any other candidate.

**31.**

- (1) When the number of continuing candidates is reduced to the number of vacancies remaining unfilled, the continuing candidates shall be declared elected.
- (2) When only one vacancy remains unfilled, and the value of the votes of a continuing candidate exceeds the total value of all other votes capable of transfer, that candidate shall be declared elected.
- (3) When only one vacancy remains unfilled, and there are only two continuing candidates, and those two candidates have each the same value of votes, and no surplus remains capable of transfer, one candidate shall be declared excluded under the next succeeding section and the other declared elected.

**32.**

- (1) If, when there is more than one surplus to distribute, two or more surpluses are equal, or if at any time it becomes necessary to exclude a candidate, and two or more candidates have the same value of votes, and are lowest on the poll, regard shall be had to the original votes of each candidate, and the candidate for whom fewest original votes are recorded shall have his surplus first distributed or shall be first excluded, as the case may be.

- (2) If the values of their original votes are equal, the returning officer shall decide by lot which candidate shall have his surplus distributed or shall be excluded.

#### **Part IV – By-elections**

#### **33.**

When, and as often as a casual vacancy occurs, the Minister shall, upon being notified of such vacancy, publish a notice in the *Gazette* declaring a vacancy and fixing a date on, and a time and place at which, a sitting of members will be held for the purpose of electing a person to fill the vacancy, and thereupon the like proceedings shall, *mutatis mutandis*, take place for the filling of such vacancy as are hereinbefore prescribed in regard to a full election.