

eSwatini

## Elections Order, 1992

### Kings Order in Council 2 of 1992

Legislation as at 1 December 1998

FRBR URI: /akn/sz/act/order-in-council/1992/2/eng@1998-12-01

There may have been updates since this file was created.

PDF created on 21 February 2024 at 18:16.

*Collection last checked for updates: 1 December 1998.*

Check for updates



#### About this collection

The legislation in this collection has been reproduced as it was originally printed in the Government Gazette, with improved formatting and with minor typographical errors corrected. All amendments have been applied directly to the text and annotated. A scan of the original gazette of each piece of legislation (including amendments) is available for reference.

This is a free download from the Laws.Africa Legislation Commons, a collection of African legislation that is digitised by Laws.Africa and made available for free.

[www.laws.africa](http://www.laws.africa)  
[info@laws.africa](mailto:info@laws.africa)

There is no copyright on the legislative content of this document.  
This PDF copy is licensed under a Creative Commons Attribution 4.0 License (CC BY 4.0). Share widely and freely.

## Elections Order, 1992

### Contents

1. Short title and commencement .....	1
2. Interpretation .....	1
3. Appointment of returning and other election officers .....	3
4. Writ of election .....	3
5. Nomination of candidate .....	3
6. Decision as to validity of nomination paper .....	4
7. *** .....	4
8. Withdrawal of candidature .....	4
9. Uncontested elections .....	4
10. Contested elections .....	5
11. Polling division and polling stations .....	5
12. Power to adjourn polling day in event of emergency .....	5
13. Death of candidate .....	6
14. Requisition of building for polling station .....	6
14bis. Printing of ordinary and tendered papers .....	6
15. Candidate's agents and messenger .....	6
16. Furniture for polling stations .....	7
17. Forms, stationery and equipment for polling stations .....	7
18. Official mark and instrument .....	8
19. Ballot boxes .....	8
20. Declaration of secrecy .....	8
21. Notice at polling station .....	8
22. Admission to polling stations .....	8
23. Right to enter polling booth .....	9
24. Presiding officer's duties .....	9
25. Polling booth .....	9
26. Sealing of ballot boxes before commencement of poll .....	10
27. Assistance to voters by election officer .....	10
28. Interference with voter .....	10
29. Questions to voter .....	10
30. Circumstances under which ballot paper may be refused by presiding officer .....	11
31. Issue of ordinary ballot papers .....	11
32. Issue of tendered ballot papers .....	11
33. Marking of ballot paper .....	12

34. Disposal of marked ballot paper .....	12
35. Marking of ballot paper by presiding officer .....	12
36. Spoilt ballot paper .....	13
37. Close of poll and making up of election material .....	13
38. Procedure of poll on more than one day .....	14
39. Adjournment of poll in case of riot .....	14
40. Delivery of election material to returning officer .....	14
41. Receipt of election material by returning officer .....	14
42. Persons allowed inside place of counting .....	15
43. Requisite at counting .....	15
44. Checking of election material .....	15
45. Counting of votes .....	16
46. Dealing with doubtful ballot papers .....	16
47. Returning officer's decision on doubtful ballot papers .....	16
48. Rejection or acceptance of ballot papers .....	16
49. Declaration of result .....	17
50. Publication of name of successful candidate .....	17
51. Opening of envelopes and other action by returning officer .....	17
52. Disposal of election papers .....	18
53. Opening or inspection of election papers .....	19
54. Disqualification as polling agent .....	19
55. Disqualification as officer .....	19
56. Candidate's powers .....	19
57. Non-attendance of agent .....	19
58. Secrecy of voting .....	19
59. Impartiality of election officers .....	20
60. Penalty for interference with election proceedings .....	20
61. Penalty for infringement of secrecy .....	20
62. Offence relating to ballot papers and other documents .....	20
Part II – Corrupt practices and other offences .....	21
63. Treating .....	21
64. Undue influence .....	21
65. Bribery .....	22
66. Personation .....	23
67. Penalties for corrupt and illegal practices .....	23

68. Meeting on premises where liquor is usually sold .....	24
69. Penalty in respect of certain employment .....	24
70. Penalty for employer not allowing employee reasonable period for voting .....	24
71. Prohibition of flags, speaking apparatus and sale of intoxication liquor .....	24
Part III – General .....	25
72. Inaccurate description of person or place .....	25
73. Defacement of notice .....	25
74. Variation of period .....	25
75. Approval of forms, and official seal (First Schedule) .....	25
76. Registration of photographs .....	25
Second Schedule .....	28

# eSwatini

## Elections Order, 1992 Kings Order in Council 2 of 1992

*Published in Swaziland Government Gazette Extraordinary 918 on 16 December 1992*

**Assented to on 10 December 1992**

**Commenced on 16 December 1992**

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

**A King's Order-in-Council to provide for the general election.**

### 1. Short title and commencement

This order may be cited as the Elections Order, 1992, and shall come into force upon publication in the *Gazette*.

### 2. Interpretation

In this Order unless the context otherwise requires—

“**approved form**” means the approved Form listed and numbered in the First Schedule;

“**candidate**” means a person who is nominated for election as a member;

“**competent witness**” means—

- (a) a chief or Induna of Chiefdom;
- (b) a person who, within Swaziland, holds the office of, or appoint as, a district assistant, registration officer, returning officer, or a town clerk of a municipality or a chairman or secretary of a town council or town board or police officer of or above the rank of sub-inspector; or
- (c) an Ambassador or High Commissioner of Swaziland or a member of his staff outside Swaziland who has been appointed by him as competent witness;
- (d) a person who, within or without Swaziland, is or holds the office of, or appointment as, an advocate, attorney, magistrate, bank manager, consular officer of a country or territory of the Commonwealth, commissioner of oath, justice of the peace;

but does not include candidate for election or election agent;

“**corrupt practice**” means a corrupt practice as described in Part II;

“**counting officer**” means an officer, appointed as such under [section 3](#);

“**election**” means an election in terms of section of the Establishment of Parliament of Swaziland Order 1992;

“**election agent**” means an election agent appointed under [section 15](#) by or on behalf of a candidate or his agent for an election and includes, where the candidate has appointed himself as his election agent, the candidate acting in his capacity as election agent;

“**electoral officer**” means an electoral officer designated under [section 3](#);

“**election petition**” means a petition referred to in the Parliament (Petitions) Act [No. 16 of 1968](#);

“**illegal practice**” means an illegal practice as defined by [section 67](#);

**“Indvuna yeNkhundla”** means the Indvuna appointed by the King in terms of section 4 of the Establishment of Parliament of Swaziland Order, 1992;

**“Inkhundla”** means Inkhundla as proclaimed under section 3 of the Establishment of Parliament of Swaziland Order of 1992 and for the purpose of this Order includes Umphakatsi and polling division;

**“intoxicating liquor”** has the same meaning as is assigned to “liquor” or “intoxicating” under the law relating to liquor licences;

**“member”** means an elected member of the House of Assembly;

**“Minister”** means the Minister responsible for Tinkhundla;

**“nomination day”** means the day specified under [section 4](#) as nomination day;

**“nomination paper”** means the approved Form No.12;

**“official mark”** means a mark decided in accordance with [section 18](#);

**“official seal”** means a mark or seal approved under [section 18](#);

**“payment”** means any pecuniary or other reward;

**“pecuniary reward”** or “money” includes any office, place of employment, valuable security or other equivalent of money, and any valuable consideration, and any expressions referring to money shall be construed accordingly;

**“polling agent”** means a polling agent appointed under [section 15](#);

**“polling day”** means the day or days specified under [section 4](#) as polling day;

**“polling division”** means a polling division specified under [section 11](#);

**“polling officer”** means a polling officer appointed under [section 5](#);

**“polling station”** means a polling station specified under [section 11](#);

**“presiding officer”** means a presiding officer appointed under [section 3](#);

**“printing”** includes typewriting, reneoin, lithography, photography, and all other modes of representing or reproducing words in visible form;

**“public meeting”** means a meeting consisting of ten or more persons held in a public place;

**“public place”** means a place to which for the time being the public, or any section of the public, is entitled or permitted to have access, whether on payment or otherwise including Imphakatsi;

**“registered voter”** means a voter whose name appears on the voters list;

**“returning officer”** means a returning officer appointed under [section 3](#);

**“speaking apparatus”** means an apparatus adapted or constructed for the amplification or reproduction of the human voice;

**“tendered ballot paper”** means a ballot paper referred to in [section 32](#);

**“Umphatsi-Lukhetfo”** means the Umphatsi-Lukhetfo or Chief Electoral Officer appointed by the King in terms of [section 3](#) of, the Voters Registration Order 1992;

**“valuable consideration”** includes any office, place of employment, valuable security or other equivalent for money or pecuniary reward;

**“voter”** means a person whose name is on a voters list;

**“voters list”** means the voters list for an Inkhundla, and where applicable includes a supplementary voters list, and

“**registration**” and its grammatical variations shall be construed accordingly.

### 3. Appointment of returning and other election officers

- (1) Umphatsi-Lukhetfo shall designate a public officer to be a returning officer for each Inkhundla.
- (2) The Deputy Umphatsi-Lukhetfo shall, in consultation with Umphatsi-Lukhetfo appoint a presiding officer and counting officers as may be necessary for taking the poll and counting the votes.
- (3) The Deputy Umphatsi-Lukhetfo shall issue to a presiding officer and polling officer appointed by him an appointment in accordance with the approved Form No.8 duly completed and signed, and to a counting officer appointed by him an appointment in accordance with the approved Form No.9 duly completed and signed.
- (4) No person who has been or is being employed by any other person in or about the election shall be appointed presiding officer, polling officer or counting officer.

### 4. Writ of election

- (1) For the purpose of a general election of members of the House of Assembly or of a bye-election to fill a vacancy caused by death, resignation or otherwise of a member of such House, the King shall issue a writ addressed to the returning officer of each Inkhundla for which members are to be returned, which writ shall be forwarded to Umphatsi-Lukhetfo for transmission to the returning officer to whom it is addressed.
- (2) Subject to sub-section (3), a writ shall be in the approved Form No.10 and shall specify the day for nomination of candidates, the times and place of the nomination, and the day or days on which the poll shall be taken if necessary.
- (3) If he considers it necessary, the returning officer may adjourn the taking of the poll to a day or days not less than seven days subsequent to the day or days so specified.
- (4) So soon as any writ or writs have been issued under sub-section (1), Umphatsi-Lukhetfo shall publish a notice in sub-section (2) for the nomination of candidates in respect of the Umphatsi concerned, the day or days on which, if necessary, but subject to sub-section (3), the poll shall be taken in the Inkhundla concerned or, if the poll is to be taken on different days in different polling divisions, the day on which polling shall take place in each polling division.
- (5) Upon receipt of a writ issued under sub-section (1) the returning officer shall proceed to hold an election in the manner provided in the Order, and shall give and publish notice thereof throughout the Inkhundla in such manner as he thinks fit and shall cause a notice to be posted in the approved Form No.11 in such places as he considers desirable.
- (6)
  - (a) The returning officer shall, from nine o'clock in the morning until four o'clock in the afternoon, receive at the place of nomination, papers and declarations made under [section 5\(6\)](#).
  - (b) The returning officer may authorise the presiding officer in each umphakatsi to perform the duties assigned to him by paragraph (a) of this subsection.

*[Added K.O-I-C. 9/1993]*

### 5. Nomination of candidate

- (1) On the day and at the times and place specified under [section 4](#) for the nominations of candidates in respect of an Umphatsi, the returning officer shall attend to receive nominations of candidates for election.
- (2) The number of candidates nominated by each Umphatsi or recognisable community shall not be less than four and not more than ten.

- (3) The nomination of a candidate for election shall be endorsed with the consent of the candidate to nomination and supported by not less than fifteen persons who are registered voters in the Inkhundla.
- (4) The fact that the name of a supporter of a candidate is struck off the voters list for the Umphakatsi or Inkhundla subsequent to nomination shall not invalidate the nomination of the candidate.
- (5) The nomination of a candidate shall be made on the approved Form No.12 which shall be delivered to the returning officer.
- (6) A candidate shall at the time of his nomination deliver to the returning officer a declaration on oath in the approved Form No.13 to his qualifications to be elected a member and also that he is not disqualified from being so elected.
- (7) Following nomination, a candidate shall present himself to the Police for the purpose of getting a clearance certificate which shall be delivered to the returning officer.
- (8) No candidate may be nominated for election—
  - (a) for more than one Umphakatsi or recognisable community,
  - (b) in more than one Inkhundla, or
  - (c) whilst he is a member of the House of Assembly.

## 6. Decision as to validity of nomination paper

- (1) Where, in accordance with this Order, a nomination paper endorsed with the consent of the candidate and signed by not less than fifteen persons and a clearance from the Police are delivered to the returning officer, the candidate shall be deemed to stand nominated unless and until the returning officer decides, in accordance with this section, that the nomination paper is invalid, or proof is given to the satisfaction of the returning officer of the withdrawal or death of the candidate.

## 7. \*\*\*

*[Due to a numbering error in the original text, Section 7 never existed.]*

## 8. Withdrawal of candidature

- (1) A candidate may, before four o'clock of the afternoon of nomination day, and not afterwards, withdraw his candidature by giving notice to that effect to the returning officer signed by himself.
- (2) The returning officer shall forthwith cause notice of the withdrawal to be posted in a conspicuous position outside the place of nomination.

## 9. Uncontested elections

- (1) In the case of an election if at four o'clock in the afternoon of nomination day, the number of candidates duly nominated does not exceed the number of candidates to be elected, the returning officer shall as soon as possible publicly declare the candidates to be elected and shall immediately thereafter by endorsement of the writ, certify the return of those Umphatsi-Lekhetfo.
- (2) Where Umphatsi-Lukhetfo has specified a nomination day for any Inkhundla and the number of candidates duly nominated is less than the number of candidates to be elected, Umphatsi-Lukhetfo shall issue a fresh writ under [section 4](#) for the Inkhundla concerned for the election of the number of members required to be elected for which candidates have not been returned under sub-section (1).



## 10. Contested elections

- (1) If the number of candidates duly nominated in a Chiefdom/Urban Industrial area or Inkhundla exceeds the number of candidates to be elected the returning officer shall adjourn the election for the holding of a poll, and a poll shall be taken in the manner hereinafter provided.
- (2) The returning officer shall as soon as practicable after adjourning the election, give notice in the *Gazette* and in such other manner in each polling division as Umphatsi-Lukhetfo shall direct, of the —
  - (a) day or days on which and the time or times at which the poll will be taken;
  - (b) situation of the polling station;
  - (c) voters (by serial number or otherwise) assigned to each polling station in a polling division where there is more than one polling station; and
  - (d) full names, addresses, occupations and photographs of the candidates nominated for election.

## 11. Polling division and polling stations

- (1) Any Inkhundla may be sub-divided by the Delimitation Commission by notice in the *Gazette* into as many polling divisions as may be necessary for the purpose of conveniently taking a poll of the registered voters of the Inkhundla.
- (2) For this purpose and in like manner the number of polling divisions in any Inkhundla may be increased or decreased or the boundaries thereof may be altered.
- (3) Any sub-division of an Inkhundla into polling divisions shall remain in force until altered under this section.
- (4) For this purpose there shall be one polling station at such convenient place within the Inkhundla as determined by the Delimitation Commission or, if the Inkhundla is divided into polling divisions, there shall be one polling station within each such polling division:

Provided that if Umphatsi-Lukhetfo is of opinion that the conduct of an election will be facilitated thereby, he may consult the Delimitation Commission concerning the establishment of more than one polling station in the Inkhundla or in any polling division therein for voters whose names appear on the opposite serial numbers specified by him in respect of each polling station or to establish one polling station in respect of two or more polling divisions.
- (5) In addition to the polling stations referred to in the preceding provisions of this section the office of each Ambassador, High Commissioner and Trade Representative of Swaziland abroad shall be a polling station at which registered voters residing in the country to which such Ambassador, High commissioner, Trade Representative, as the case may be, is accredited, may cast their votes in respect of any contested election held under this Order, and the Ambassador, High Commissioner or Trade Representative, as the case may be, or a person deputed thereto by him, shall be the presiding officer for such polling station.

## 12. Power to adjourn polling day in event of emergency

- (1) If at any time between the issue of a writ under [section 4](#) and the day appointed by the writ for the taking of the poll at an election, Umphatsi-Lukhetfo is satisfied that it is expedient in the public interest to do so, he may by notice in the *Gazette* adjourn the taking of the poll to some other day or days specified in the notice, not being more than thirty days after the day specified in the writ or writs issued under [section 4](#).

- (2) A notice made under sub-section (1) may be expressed to apply only to such Tinkhundla as are specified in it, in which event the poll shall be taken in every Inkhundla for which the writ has been issued, and which is not so specified, upon the day or days appointed for the taking of the poll.
- (3) Where a notice is given under sub-section (1), the writs for all Tinkhundla to which it applies shall be deemed to have been amended by the substitution for the day or days specified in the writs as being the day or days for the holding of the poll of the day so specified in the notice.
- (4) Where a notice under sub-section (1), is published before the day which would have constituted the nomination day if the notice had not been given, the nomination day shall be deemed to have been adjourned to the twenty-third day next before the day to which the holding of the poll is adjourned by the notice:

Provided that if the twenty-third day is a Sunday or a public holiday, the nomination day shall be deemed to have been adjourned to the first day, not being Sunday or a public holiday, after the twenty-third day.

### 13. Death of candidate

If after the polling day has been fixed for an election in any Inkhundla, any duly nominated candidate thereat dies before the poll has commenced, the Umphatsi-Lukhetfo shall, upon being satisfied of the fact of the death, withdraw so far as it concerns the Inkhundla the notice fixing the polling day, and all proceedings relating to that election shall be commenced afresh in precisely the same manner as if a vacancy had occurred:

Provided that no fresh nomination shall be necessary in the case of a candidate who was duly nominated at the time when such notice was withdrawn.

### 14. Requisition of building for polling station

- (1) The returning officer may require that any convenient building (other than a dwelling house) be used for the purpose of taking a poll:

Provided that if so required he shall make adequate compensation to the owner or occupier, as the case may be, of such building for use or any damage thereto as a result of the poll being taken therein.

### 14bis. Printing of ordinary and tendered papers

- (1) On the expiry of the time allowed by [section 8](#) after the withdrawal by a candidate of his candidature, the returning officer shall, in the case of candidates in respect of whom a poll is to be taken, cause to be printed in the approved Form No.14 a sufficient number of ordinary ballot papers on white paper and a sufficient number of tendered ballot papers on coloured paper.
- (2) A ballot paper shall contain the names of the candidates in alphabetical order of their surnames and, if there are two or more candidates of the same surname, in alphabetical order of their other names.
- (3) Both ordinary ballot papers and tendered ballot papers shall be numbered consecutively commencing with number one on the back thereof, each having a counterfoil with the corresponding number on the face thereof:

Provided that a photograph shall be printed opposite the name of the candidate to whom it is allotted.

### 15. Candidate's agents and messenger

- (1) A candidate at any election may appoint—
  - (a) one election agent; and

- (b) one polling agent and one messenger in respect of each polling station in the Inkhundla, and shall at least seven clear days before the date of the election, advise the returning officer, in accordance with the approved Form No.14, of the names of his agents and messenger, if any, to attend at each polling station, and of the name of his election agent, if any, to be present at the counting of votes.
- (2) If an agent becomes incapable of acting or dies, the candidate may appoint another agent in his place and shall forthwith give the returning officer notice in writing of the name and address of the agent so appointed.
- (3) The returning officer shall notify each presiding officer of the names of the agents of the candidates and their messengers who will attend at his polling station.

## 16. Furniture for polling stations

The returning officer shall ensure that the following furniture is provided at each polling station before the day of the poll—

- (a) sufficient tables and chairs for the presiding officer, polling officer and the agents of the candidates; and
- (b) a sufficient number of screened polling booths.

## 17. Forms, stationery and equipment for polling stations

- (1) Umphatsi-Lukhetfo shall, before the day of the poll, supply each presiding officer through the returning officer with the following forms, stationery and equipment for use at the polling station of such presiding officer—
  - (a) a list of the candidates;
  - (b) a sufficient number of the voters list or portion thereof containing the names of the voters entitled to vote at that polling station;
  - (c) a copy of this Order;
  - (d) a supply of ordinary ballot papers and tendered ballot papers;
  - (e) a supply of approved Forms Nos.16 to 33 inclusive, and No.40, and of the Form contained in the Second Schedule;  
*[Please note: numbering as in original.]*
  - (f) a sufficient number of instruments for placing the official mark on ballot papers;
  - (g) a sufficient number of instruments for marking ballot papers;
  - (h) one official seal;
  - (i) a supply of pencils, sealing wax, matches, brown paper, tape, string, paste and drawing pins; and
  - (j) a sufficient number of ballot boxes;

and Umphatsi-Lukhetfo shall do such other acts and things as may be necessary for effectually conducting the election in the manner provided by this Order.

- (2) A returning officer shall give a receipt for the things supplied to him by Umphatsi-Lukhetfo and shall, in turn, receive a receipt from the presiding officer for the things supplied to the presiding officer.

## 18. Official mark and instrument

- (1) Umphatsi-Lukhetfo shall decide on the official mark to be placed on the ballot papers and shall not communicate any particulars of that mark to any person other than the returning officer.
- (2) Before handing the instrument for placing the official mark on ballot papers to a presiding officer, the returning officer shall insert each such instrument in a separate envelope in the approved Form No.30 and seal it with sealing wax impressed with his official seal.
- (3) At the hour of commencement of the poll, and not before, the presiding officer shall open only as many instruments as may be necessary for the purpose of the poll.

## 19. Ballot boxes

A ballot box, which shall be provided with a lock or other device for securing it when closed, shall be so constructed that ballot papers cannot be removed therefrom without opening the lid which shall be attached by hinges and have an aperture of sufficient size to permit of the introduction of ballot papers into the ballot box.

## 20. Declaration of secrecy

- (1) The returning officer and every presiding officer, polling officer, counting officer, candidate, agent and messenger of a candidate authorized to be present in a polling station at the counting of votes shall make and sign a declaration of secrecy as set out in the approved Form No.16 before a commissioner of oaths or a justice of the peace.
- (2) Every police officer authorized to be present in a polling station shall make and sign a declaration of secrecy in the approved Form No.16 before the presiding officer.
- (3) The declaration of secrecy of—
  - (a) a presiding officer shall be handed to the returning officer before the returning officer supplies the things set out in [section 17](#) to the presiding officer;
  - (b) every other person authorized to be present in a polling station shall, before the commencement of the poll, be handed to the presiding officer at the polling station, except the declaration of a candidate which shall be retained by the candidate for production at polling stations and be handed to the returning officer before the commencement of the counting of votes; and
  - (c) all persons authorized at the counting of votes shall be handed to the returning officer before the commencement of the counting of votes unless already handed in under paragraphs (a) or (b).

## 21. Notice at polling station

- (1) Before the hour fixed for the commencement of the poll, the presiding officer shall place a notice showing the full names (in alphabetical order of surname), addresses, occupations, and photographs, of the candidates for election in a conspicuous position outside the polling station.
- (2) All notices, both within and outside polling station, shall be in the English and siSwati languages.

## 22. Admission to polling stations

- (1) No person shall be admitted to vote at a polling station—
  - (a) except at the one in the polling division in respect of which his name appears on the voters list; and

- (b) where there is more than one polling station in that polling division, except at the one assigned to him in accordance with [section 11](#):

Provided that where a voter is employed by the returning officer for a purpose in connection with an election and the circumstances of the employment are, in the opinion of the returning officer, such as to prevent the voter from voting at the polling station at which he would otherwise be entitled to vote, the returning officer may in writing authorize the voter to vote at any other polling station in the Inkhundla, and that polling station shall be deemed to be the polling station allotted to such voter.

- (2) The presiding officer shall regulate the number of voters to be admitted to the polling station at the same time.
- (3) No other person, except Umphatsi-Lukhetfo, the returning officer, the presiding officer, the polling officers, the candidates, the polling agents and Regional officer and police officers on duty shall enter the polling station.

### **23. Right to enter polling booth**

Subject to [section 25\(3\)](#) and [33](#) no person other than a voter desirous of voting shall enter a polling booth during the hours of polling, and in no case shall more than one voter be in a polling booth at the same time.

### **24. Presiding officer's duties**

- (1) The presiding officer shall take such steps and give such directions to the persons inside the polling station as may be necessary to ensure compliance with this Order and to keep order at the polling station.
- (2) Save as is provided in [section 22\(2\)](#) and (3) the presiding officer may require any person (other than a person actually recording his vote) who misconducts himself or fails to obey the lawful directions of the presiding officer, to leave the polling station.
- (3) The presiding officer may authorize a polling officer to perform the functions, under this Order, of the presiding officer—
  - (a) during the temporary absence of the presiding officer from the polling station, or
  - (b) in other special circumstances, and reference in sub-sections (1) and (2) to the presiding officer shall be construed accordingly.
- (4) A person who fails to leave the polling station when so required may be arrested by a police officer without warrant on the order of the presiding officer and shall be guilty of an offence and liable on conviction to a fine of five hundred emalangenis or, in default of payment thereof, imprisonment for three months.
- (5) The functions conferred by this section shall not be exercised so as to prevent any voter who is otherwise entitled to vote at any polling station from having an opportunity of voting at that polling station.

### **25. Polling booth**

- (1) A polling booth shall be provided with a writing-flap, desk or table, and shall be so arranged that no person can enter or leave it without being seen by the presiding officer or a polling officer.
- (2) Before the commencement of the poll, the presiding officer shall affix inside each polling booth, in such a position as to face the voter, a copy of the directions for the guidance of voters as set out in the approved Form No.17, and shall provide in each polling booth for use by voters an instrument, to be supplied by Umphatsi-Lukhetfo, which shall be attached by string to the writing-flap, desk or table.

- (3) The presiding officer shall, throughout the hours of polling, from time to time inspect or cause to be inspected every polling booth when not occupied by a voter, with a view to ensuring that the writing-flap, desk or table has an instrument attached to it, that a copy of the directions for the guidance of voters is still in position and has not been tampered with and that no other notice or paper is contained therein.

## **26. Sealing of ballot boxes before commencement of poll**

- (1) Before the commencement of the poll, the presiding officer shall show those present inside the polling station that the ballot box is empty.
- (2) Thereafter, he shall close and secure the lid of the ballot box and, with sealing wax impressed with his official seal and the seals of such candidates or their agents as may desire to affix their seals, seal the lock or device in such a way that the lid cannot be opened without the seals or fastenings being broken or damaged.
- (3) The ballot box so secured and sealed shall not be opened except as provided in this Order and shall not be removed from the polling station for the duration of the poll.
- (4) The presiding officer shall place and keep each ballot box in a position where it will be within in his view for the duration of the poll.

## **27. Assistance to voters by election officer**

Except as provided in this Order the presiding officer or polling officers shall not give any assistance or explanation to a voter beyond—

- (a) directing him to a polling booth where he may mark his ballot paper;
- (b) informing him that directions for his guidance are posted inside the polling booth; or
- (c) if he is illiterate, explaining to him the directions so posted; and
- (d) instructing him as to how his ballot paper should be folded and disposed of after he has marked it.

## **28. Interference with voter**

- (1) Except as provided in this Order no person shall approach, interfere with, speak to, or assist a voter from the time he has received his ballot paper to the time he has, in the case of an ordinary ballot paper, deposited it in the ballot box, in the case of a tendered ballot paper, handed it to the presiding officer.
- (2) A person who contravenes sub-section (1) shall be guilty of an offence and liable on conviction to a fine of one thousand emalangenis or imprisonment for six months, or both.

## **29. Questions to voter**

- (1) No enquiry shall be made at a poll as to the right of any person to vote, except that when a person applies for a ballot paper the presiding officer may, and if so requested by any candidate or his polling agent shall, before allowing any person to vote, put to him any or all the questions set out in the form contained in the Second Schedule, and the presiding officer may record the answers of the applicant on that form and require him to make and sign the declaration set out therein.
- (2) A person who does not answer the first question distinctly and absolutely in the affirmative and the second and third questions distinctly and absolutely in the negative, or who, when so required by the presiding officer, fails or refuses to complete and sign the declaration set out in the form contained in the Second Schedule shall not be permitted to vote.

- (3) Any person who makes a false answer to any of those questions shall be guilty of an offence and liable on conviction to a fine of five thousand emalangeni or, in default of payment thereof, to imprisonment for two years, or both.

### **30. Circumstances under which ballot paper may be refused by presiding officer**

- (1) If any candidate or his election agent or the polling agent of any candidate or any voter makes a declaration on oath in the approved Form No.40 before the presiding officer stating that a person enrolled on the voters list is dead or is so incapacitated by sickness, absence, or otherwise, that it is impossible for such person to be present at the polling station to record his vote at the election then being held, the presiding officer shall refuse to hand a ballot paper to any person who applies for it in the name of the person the subject of the declaration, unless the person so applying proves his identity to the satisfaction of the presiding officer or makes a declaration on oath before the presiding officer that he is the person whose name appears on the voters list for the Inkhundla and that the statements made in the first-mentioned declaration (which shall be read over to him) are false.
- (2) The presiding officer is hereby authorized and required to administer any oath described in sub-section (1).
- (3) Any person who makes a false statement in any declaration mentioned in sub-section (1), knowing the statement to be false, shall be guilty of an offence and liable on conviction to the penalties prescribed by law for perjury.
- (4) More than one person may be referred to in any declaration on oath made under sub-section (1), but the reason why each of the persons referred to is unable to attend at polling station shall be clearly connected with the person to whom the declaration relates.

### **31. Issue of ordinary ballot papers**

- (1) A polling officer to whom application is made for a ballot paper shall, after satisfying himself that the applicant is enrolled as a voter and that there is no evidence that a ballot paper has already been issued under the name in which the applicant claims to be entitled to vote or, when so instructed by the presiding officer, issue to the applicant an ordinary ballot paper in the following manner, that is to say, he shall—
  - (a) call out the number and name of the voter as stated in the voters list;
  - (b) enter the number in the space provided on the counterfoil of the ballot paper to be issued to the applicant;
  - (c) tear out the ballot paper and mark it with the official mark on the back in the space provided;
  - (d) fold the ballot paper in four lengthwise and crosswise, so that the face thereof is on the inside and the official mark on the outside, then unfold it and hand it to the applicant; and
  - (e) draw a line in pencil through the number and name of the voter in the voters list as evidence that a ballot paper has been issued.
- (2) If, for any reason, the presiding officer or a polling officer has any doubt as to a ballot paper held by a voter being the ballot paper issued to him, he may for the purpose of comparison with the number printed on the counterfoil require a voter, before dropping the ballot paper in the ballot box, to show him the number and official mark on the back of the ballot paper.

### **32. Issue of tendered ballot papers**

- (1) If an applicant for a ballot paper states that a particular name in the voters list refers to him and there is evidence that a ballot paper has already been issued in respect of that name, the polling officer shall not issue an ordinary ballot paper to the applicant but shall refer the matter to the

presiding officer who shall ask the applicant the questions set out in the form contained in the Second Schedule, record the answers and require him to make and sign declaration set out therein.

- (2) If the applicant answers the first of those questions distinctly and absolutely in the affirmative and the second and third questions distinctly and absolutely in the negative, and makes and signs such a declaration, the presiding officer shall issue to him a ballot paper, called a tendered ballot paper, in like manner to that provided by [section 31](#):

Provided that a note “tendered ballot paper issued” shall be made in the voters list against the name concerned.

### **33. Marking of ballot paper**

- (1) A person to whom a ballot paper has been issued shall immediately take it to an unoccupied polling booth and there without delay secretly signify with the instrument provided the candidate for whom he desires to vote by making a mark or hole thereon in the—
  - (a) square directly opposite the name and representative or candidate’s photograph, or
  - (b) space provided for the name or for the representative or candidate’s photograph.
- (2) Having so marked the ballot paper, the voter shall then fold it in four lengthwise and crosswise so that the face thereof is on the inside and the official mark on the outside.

### **34. Disposal of marked ballot paper**

- (1) After compliance with [section 33](#) the voter shall, in the case of an ordinary ballot paper, show the official mark to the presiding officer or a polling officer and put it in the ballot box provided or, in the case of a tendered ballot paper, hand it to the presiding officer and thereafter quit the polling station.
- (2) No voter shall remove a ballot paper from the polling station.
- (3) If through inadvertence the official mark has not been placed on an ordinary ballot paper about to be put into the ballot box or on a tendered ballot paper handed to the presiding officer, the presiding officer may cause the mark to be placed on the ballot paper.
- (4) The number of the voter as shown in the voters list shall be endorsed by the presiding officer on the back of the tendered ballot paper and entered on the tendered votes register in the approved Form No.18 duly completed.
- (5) The presiding officer shall set aside the tendered ballot paper in a separate envelope in the approved Form No.19 duly completed.

### **35. Marking of ballot paper by presiding officer**

- (1) On application by a voter who, owing to inability to read or on account of blindness or other physical infirmity, is unable to vote in the manner provided by [section 33](#) the presiding officer shall take the voter aside and shall ascertain from him, no other person being present or within hearing the name of the candidate or candidates for whom he wishes to vote.
- (2) The presiding officer shall then immediately go into the polling booth with the voter and mark the ballot paper of the voter in the manner directed by the voter, and the presiding officer shall thereupon fold the ballot paper as required by this Order and, in the case of an ordinary ballot paper put it in the ballot box, in the case of a tendered ballot paper, retain it to be dealt with as provided by [section 34\(4\)](#) and [34\(5\)](#).
- (3) The presiding officer shall enter the number and name as shown on the voters list of any voter whose ballot paper has been marked by him in terms of sub-section (1) on a list in accordance with the approved Form No.20 duly completed.



### 36. Spoilt ballot paper

- (1) If a voter has inadvertently spoilt a ballot paper he may return it to the presiding officer who shall, if he is satisfied of the inadvertence, issue him with a fresh ballot paper in which event the presiding officer shall—
  - (a) retain and immediately cancel the spoilt ballot paper and note the fact of the cancellation on the counterfoil;
  - (b) note on the counterfoil of the spoilt ballot paper the number of the fresh ballot paper issued thus “see also counterfoil No. \_\_\_\_\_”; and
  - (c) note on the counterfoil of the fresh ballot paper issued the number of the spoilt paper thus “see also counterfoil No. \_\_\_\_\_”.
- (2) The presiding officer shall set aside the spoilt ballot papers in a separate envelope in the approved Form No.21 duly completed.

### 37. Close of poll and making up of election material

- (1) No ballot paper shall be delivered to a person after the hour fixed for closing the poll but, if at that hour there is in the polling station a voter to whom a ballot paper has been delivered, that voter shall be allowed to record his vote.
- (2) After the voters inside the polling station entitled to vote have voted, the presiding officer shall close the poll and shall immediately close the aperture of the lid of every ballot box and seal it with sealing wax impressed with his official seal and the seals of such candidates or their agents as may desire to affix their seals.
- (3) The presiding officer shall then sign the “Tendered votes register” in the approved Form No.18 and the “Register of voters whose ballot papers have been marked by the presiding officer” in the approved Form No.20, and complete and sign the “Ballot paper account”, in duplicate, in the approved Form No.22.
- (4) The presiding officer shall then in the presence of the persons lawfully present inside the polling station, enclose the following envelopes, and seal each envelope with sealing wax impressed with his official seal and the seals of such candidates or their agents as may desire to affix their seals—
  - (a) the appointment of the presiding officer and the polling officers, and the declarations of secrecy handed to him in terms of [section 20\(3\)\(b\)](#) in an envelope in the approved Form No.23 duly completed;
  - (b) the completed approved Form No.40 “Declarations of oath made in terms of [section 30 \(1\)](#)” and the declarations made under the Second Schedule in an envelope in the approved Form No.24 duly completed;
  - (c) used tendered ballot papers and tendered votes register in the approved Form No.18 in an envelope in the approved Form No.19 duly completed;
  - (d) register of voters whose ballot papers have been marked by the presiding officer in the approved Form No.20 in an envelope in the approved Form No.25 duly completed;
  - (e) the spoilt ballot papers in an envelope in the approved Form No.21 duly completed;
  - (f) the ballot paper account in duplicate in approved Form No.22 in an envelope in the approved Form No.26 duly completed;
  - (g) the counterfoils of the used ballot papers in an envelope in the approved Form No.27 duly completed;
  - (h) the marked copies of the voters list in an envelope in the approved Form No.28 duly completed;

- (i) the unused ballot papers, in an envelope in the approved Form No.30 duly completed;
  - (j) the instruments for marking ballot papers with official marks, in an envelope in the approved Form No.29 duly completed;
  - (k) all other election material except such as may be necessary for the purpose of sub-sections (6) and (7) in an envelope in the approved Form No.31 duly completed.
- (5) For the purpose of separating the counterfoil of used ballot papers from the unused ballot papers, a partly used ballot paper book shall be divided into two.
- (6) The envelopes referred to in sub-section (4) shall, after being sealed as required and signed by the presiding officer, be made up into one parcel with a label signed by the presiding officer in accordance with the approved Form No.32 and duly completed and seal with wax impressed with his official seal and the seals of those candidates or their agents who may desire to affix their seals.
- (7) The presiding officer shall then enclose the official seal in an envelope in the approved Form No.33 duly completed and signed by him.

### **38. Procedure of poll on more than one day**

- (1) If in terms of [section 4](#) the writ of election specifies that the poll shall be taken on more than one day, the presiding officer shall, for the purpose of closing the poll on each day that it continues, observe [section 37](#) save the requirements of [section 37\(4\)](#) relating to the completion and sealing of each envelope with sealing wax impressed with his official seal and the seals of the candidates or their agents, and shall adjourn the poll to the following day on which the hours of polling shall be the same as for the first day.
- (2) Before re-opening the poll on the following day, the presiding officer shall permit those candidates or their agents who may be present to examine the seals on the ballot box and all packages sealed on the previous day, and any seal which has been broken or tampered with shall be noted and the fact reported to the returning officer forthwith.

### **39. Adjournment of poll in case of riot**

- (1) If the proceedings at any polling station are interrupted or obstructed by riot or open violence, the presiding officer shall adjourn the proceedings till the following day and forthwith give notice thereof to the returning officer.
- (2) If the poll is adjourned at any polling station the procedure shall be the same as provided in [section 38](#).

### **40. Delivery of election material to returning officer**

The ballot boxes, the envelope in the approved Form No.33 containing the official seal and parcel under label in the approved Form No.32 containing the other election materials shall be delivered to the returning officer personally or by a person deputed for the purpose by the presiding officer:

Provided that it shall be sufficient for a presiding officer referred to in [section 35\(2\)](#) to forward such ballot boxes, envelope and parcel forthwith by diplomatic bag to the returning officer.

### **41. Receipt of election material by returning officer**

The returning officer shall receive into his custody the ballot boxes and other election material mentioned in [section 40](#) and shall, as soon as practicable after he has received all the ballot boxes and other election material, make arrangements for counting the votes given at the election and for that purpose shall give notice in writing to each candidate or his election agent of the time when and the place where those votes will be counted.

#### 42. Persons allowed inside place of counting

The returning officer shall be in charge of the place where the counting of votes takes place and no person shall be admitted thereto by him, except Umphatsi-Lukhetfo, the electoral officers, the counting officers, the candidates and one election agent for each candidate:

Provided that the presiding officers or their deputies shall be admitted for the purpose of delivering the ballot boxes and other election material.

#### 43. Requisite at counting

The returning officer shall take with him into the place where the counting of votes is to take place—

- (a) a copy of this Order;
- (b) the official seal used by him for the purposes of the election;
- (c) a sufficient supply of approved Forms Nos.19, 21, 23, 24, 25, 26, 29, and 34 to 40 inclusive, and of sealing wax, matches, brown paper, string and paste.

#### 44. Checking of election material

- (1) The returning officer shall deal with the election material received from each polling station separately, as follows, that is to say, he shall—
  - (a) open the envelope in the approved Form No.33 containing the official seal used by the presiding officer;
  - (b) with such candidates or their agents as may desire to do so, examine the ballot boxes and parcel labelled in the approved Form No.32, in particular the seals thereon and the fastening thereof, in order to ascertain whether they have been tampered with;
  - (c) open the parcel labelled in the approved Form No.32, and with such candidates or their agents as may desire to do so, examine the different packets therein, in particular the seals of each packet, in order to ascertain whether they have been tampered with;
  - (d) open the envelope in the approved Form No.26 containing the ballot paper account;
  - (e) open each ballot box and take out, count and return to the ballot box, the total number of ordinary ballot papers therein;
  - (f) open the envelope in the approved Forms Nos. 19, 21 and 27 and verify the ballot paper account (in the approved Form No.22) with the—
    - (i) number of ordinary ballot papers in the ballot boxes;
    - (ii) number of tendered ballot papers according to the tendered register of voters (approved Form No.18);
    - (iii) spoilt ballot papers;
    - (iv) counterfoils of ballot papers issued; and
    - (v) number of unused ballot papers;
  - (g) record on the ballot paper account any errors which he may find and permit such candidates or their agents, who may desire to do so, to make a copy of the account and his remarks thereon; and
  - (h) replace the tendered votes register, the spoilt ballot papers, the ballot paper account, the counterfoils of used ballot papers, and the unused ballot papers in their respective envelopes, and reseal those envelopes with his official seal.

- (2) The returning officer shall make a record of the seals and fastening of any ballot box or packet which appears to have been tampered with.

#### **45. Counting of votes**

- (1) After complying with [section 44](#) and whether or not the ballot paper accounts have been found correct, the ordinary ballot papers contained in all ballot boxes for each Inkhundla shall be mixed together.
- (2) The ballot papers shall then be unfolded with their backs upwards, and the official marks checked.
- (3) A ballot paper which does not bear the official mark shall be put aside for the decision of the returning officer.
- (4) Thereafter those ballot papers shall be turned over face upwards and the votes given for each candidate counted.
- (5) The ballot papers shall be kept face upwards and no person shall be permitted to look at the back thereof.

#### **46. Dealing with doubtful ballot papers**

The counting officer shall put aside for the decision of the returning officer all ballot papers—

- (a) which apparently do not bear the official mark; or
- (b) on which apparently the votes are given for more candidates than the voter is entitled to vote for; or
- (c) on which anything is apparently written or marked by which the voter could be identified, except the printed number on the back; or
- (d) which are unmarked or appear to be void for uncertainty.

#### **47. Returning officer's decision on doubtful ballot papers**

Subject to [section 48](#), the returning officer shall, with such candidates or their agents as may desire to do so, scrutinize a ballot paper put aside for his decision, and shall, after considering any objections or arguments put forward in connection therewith by any candidate or his agent, decide—

- (a) whether he will reject it, or
- (b) having accepted it, for which candidate or candidates the vote is given.

#### **48. Rejection or acceptance of ballot papers**

- (1) The returning officer shall reject and not count a ballot paper—
  - (a) which does not bear the official mark; or
  - (b) on which votes are given for more candidates than the number to be returned; or
  - (c) which is unmarked; or
  - (d) which bears writing or mark by which the voter could be identified except the printed number on the back; or
  - (e) which is so marked that he cannot determine for which candidate a vote was intended to be given.
- (2) The returning officer shall enter the word “rejected” on a ballot paper which he rejects and, if objection to his decision is made by or on behalf of a candidate, he shall add the words “rejection objected to”.

- (3) If objection to the acceptance of a ballot paper is made by or on behalf of a candidate, the returning officer shall enter thereon the words “acceptance objected to”.
- (4) A candidate or his election agent may, if present when the counting or any recount of votes is completed, require the returning officer to have the votes recounted or again recounted but the returning officer may refuse to do so, if in his opinion, the request is unreasonable.
- (5) No step shall be taken on the completion of the counting or any recount of votes until the candidates and election agents present at the completion thereof have been given a reasonable opportunity to exercise the right conferred by sub-section (4).

#### 49. Declaration of result

- (1) After having finally counted the votes, and ascertain the number of votes given for each candidate, the returning officer shall declare the candidate who has received more votes than any other candidates to have won the election.
- (2) In the event of the number of votes for two or more candidates being equal, the returning officer shall announce the date on which a by-election shall be held to decide the winner between the tying candidates.

*[Amended K.O-I-C. 8/1993]*

- (3) The returning officer shall then complete and sign the approved Form No.34 and shall forthwith—
  - (a) declare the result of the poll by reading the completed form aloud outside the place of counting and displaying a copy thereof at that place;
  - (c) forward to Umphatsi-Lukhetfo the endorsed writ and a copy of the completed approved Form No.34.

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

#### 50. Publication of name of successful candidate

As soon as Umphatsi-Lukhetfo has received an endorsed writ in accordance with [section 4](#) and [section 49](#) he shall forward it to the King and shall publish in the *Gazette* the result of the election and the names of the members so elected.

#### 51. Opening of envelopes and other action by returning officer

As soon as possible after the declaration of the result of the poll, the returning officer shall—

- (a) open the envelope in the approved Form No.23 containing the appointment of presiding and polling officers and declaration of secrecy;
- (b) open the envelope in the approved Form No.24 containing the approved Form No.24 “Declarations on oath made in terms of [section 31\(L\)](#)” and declarations made under the Second Schedule;
- (c) open the envelope in the approved Form No.25 containing the register of votes marked by the presiding officer in the approved Form No.20 and ascertain the number of votes marked by the presiding officer, reseal that envelope with his official seal and affix his signature to the back of that envelope; and
- (d) open the envelope in the approved Form No.26 containing the ballot paper account in duplicate in the approved Form No.22, remove from the envelope the duplicate copy of that account, reseal the envelope with his official seal and affix his signature to the back of the envelope.

## 52. Disposal of election papers

- (1) The returning officer shall then make up into separate packets, sealed with sealing wax impressed with his official seal, the—
  - (a) appointments of presiding officers, polling officers and counting officers in the approved Forms Nos.8 and 9 the advices of appointments of candidates' election agents and messengers in the approved Form No.15 and the declarations of secrecy in the approved Form No.16 placed together in an envelope in the approved Form No.23 duly completed;
  - (b) completed approved Form No.40 "Declarations on oath made in terms of [section 30](#)" and the declarations made under the Second Schedule, placed together in an envelope in the approved Form No.24 duly completed;
  - (c) sealed envelopes in the approved Form No.19 containing tendered ballot papers and tendered votes register placed together in another envelope of the appropriate colour in the approved Form No.19 duly completed;
  - (d) sealed envelopes in the approved Form No.25 containing the register of votes marked by the presiding officers placed together in another envelope of the appropriate colour in the approved Form No.25 duly completed;
  - (e) sealed envelopes in the approved Form No.21 containing spoilt ballot papers, placed together in another envelope of the appropriate colour in the approved Form No.21 duly completed;
  - (f) sealed envelopes in the approved Form No.26 containing ballot paper accounts placed together in another envelope of the appropriate colour in the approved Form No.26 duly completed;
  - (g) sealed envelopes in the approved Form No.27 containing counterfoils of used ballot papers placed together in another envelope of the appropriate colour in the approved Form No.27 duly completed;
  - (h) sealed envelopes in the approved Form No.29 containing unused ballot papers, placed together in another envelope of the appropriate colour in the approved Form No.29 duly completed;
  - (i) counted ordinary ballot papers, with a Label in the approved Form No.35 duly completed and affixed;
  - (j) rejected ordinary papers placed together in an envelope in the approved Form No.36 duly completed;
  - (k) all nomination papers and withdrawal forms of candidates placed together in an envelope in the approved Form No.37 duly completed.
- (2) The returning officer shall make up into a packet sealed with sealing wax impressed with his official seal, the sealed envelope in the approved Form No.28 and affix thereto the label No.38 in the approved Form, duly completed.
- (3) The returning officer shall place the packets referred to in sub-sections (1) and (2) in a bag or box, seal it with sealing wax impressed with his official seal, and affix thereto the label No.39 in the approved Form, duly completed.
- (4) The returning officer shall deliver the sealed bag or box to Umphatsi-Lukhetfo who shall be responsible for the safe custody of all election documents and shall retain those documents for a period of one year from the date of the election after which they shall, unless the High Court directs otherwise, be destroyed.

### 53. Opening or inspection of election papers

- (1) The sealed bag or box referred to in [section 52\(3\)](#) or any packet therein shall not be opened, nor shall any person be allowed to inspect any election document, except under the order of the High Court for the production by Umphatsi-Lukhetfo of the document, on its being satisfied by evidence on oath that the inspection or production is required for the purpose of instituting or maintaining a prosecution for an offence under this Order or for the purpose of proceedings questioning an election or a return, and such an order may be made subject to such conditions as to person, time, place and mode of inspection or production as such court may deem expedient:

Provided that in making and carrying out such order, care shall be taken that it is not discovered for which candidate a particular voter has voted until he has been proved to have voted and his vote has been declared by a competent court to be invalid.

- (2) Where such an order has been made for the production by Umphatsi-Lukhetfo of any document or packet in his custody relating to a specified election—
- (a) the production by him of such document or packet, in the manner directed by the order or in accordance with a rule of court, shall be conclusive evidence that the document or packet relates to the election;
  - (b) any entry appearing on a packet produced by him shall be evidence of the contents of the packet being what they are stated to be by the entry; and
  - (c) the production by him of a ballot paper, purporting to have been used at the election and of a counterfoil marked with the same printed number and having a number marked thereon in writing, shall be *prima facie* evidence that the person who voted by such ballot paper was the person opposite whose name in the voters list there appeared at the election the same number as that written on the counterfoil.
- (3) Any power given to the court by this section may be exercised by a judge thereof in chambers.

### 54. Disqualification as polling agent

No returning officer or other officer appointed under this Order or a partner or clerk of such officer shall be or act as polling agent.

### 55. Disqualification as officer

No person shall be appointed to be or to act as an officer for the purposes of this Order in connection with an election who has been employed by or on behalf of a candidate.

### 56. Candidate's powers

- (1) A candidate may himself do any act or thing which an agent of his, if appointed, would have been authorized or required to do or may assist his agent in doing any such act or thing.
- (2) Where a candidate has no agent, any notice to be given shall be given to the candidate.

### 57. Non-attendance of agent

Where in this Order an act or thing is required or authorized to be done in the presence of an agent of a candidate the non-attendance of any agent at the time and place appointed for the purpose shall not, if the act or thing is otherwise duly done, invalidate the act or thing done.

### 58. Secrecy of voting

No person shall, in any proceedings relating to an election, be required to disclose for whom he has voted.

## 59. Impartiality of election officers

The electoral officers, returning officers, polling officers and counting officers shall maintain the strictest impartiality in the discharge of their duties, and shall not, by anything in their speech or manner, give cause for imputing or suspecting the contrary.

## 60. Penalty for interference with election proceedings

A person who wilfully interrupts, obstructs, disturbs, or interferes with any proceedings relating to the conduct of a poll or the counting of votes shall be guilty of an offence and liable on conviction to a fine of five hundred emalangeni or, in default of payment thereof, imprisonment for three months.

## 61. Penalty for infringement of secrecy

- (1) Every person authorized to be present in a polling station or at the counting of votes, shall maintain, and aid in maintaining, the secrecy of voting.
- (2) A person who—
  - (a) wilfully attempts to obtain or directly or indirectly aids in obtaining information as to the supporters of a candidate, the candidate for whom a voter intended to vote or has voted, or the number on the back of a ballot paper issued to a voter;
  - (b) directly or indirectly induces a voter to display his ballot paper after he has marked it, in such a manner as to disclose the candidate for whom the voter has voted;
  - (c) unlawfully places on a ballot paper, other than the ballot paper issued to him, a mark or writing whereby the person who records the vote thereon may be identified;
  - (d) except in reply to a question lawfully put to him in the course of proceedings in a competent court, discloses or communicates any information he may have obtained as to any candidate for whom a vote is given on any particular ballot paper or as to the number on the back of a ballot paper issued to a particular voter; or
  - (e) unlawfully breaks the seal or fastening of a box, envelope or packet referred to in [section 37](#),shall be guilty of an offence and liable on conviction to a fine of one thousand emalangeni or imprisonment for six months or both.

## 62. Offence relating to ballot papers and other documents

- (1) A person who—
  - (a) forges or fraudulently defaces or fraudulently destroys a nomination paper or delivers to the returning officer a nomination paper knowing the nomination paper to be forged;
  - (b) forges or counterfeits or fraudulently defaces or fraudulently destroys a ballot paper, or the official mark on a ballot paper;
  - (c) without due authority, supplies a ballot paper to any persons;
  - (d) sells or offers to sell a ballot paper to any person or purchases or offers to purchase a ballot paper from any persons;
  - (e) not being a person entitled under this Order to be in possession of a ballot paper which has been marked with the official mark in accordance with this Order, has such ballot paper in his possession;
  - (f) puts into a ballot box anything other than the ballot paper which he is authorized by law to put in;



- (g) without due authority, takes a ballot paper out of the polling station or is found in possession of a ballot paper outside a polling station;
- (h) without due authority, destroys, takes, opens, or otherwise interferes with, a ballot box or packet or ballot papers in use or intended to be used for the purposes of an election;
- (i) without due authority, prints a ballot paper or what purports to be a ballot paper or is capable of being used as a ballot paper at an election; or
- (j) manufactures, constructs, imports, has in his possession, supplies or uses for the purposes of an election, or causes to be manufactured, constructed, imported, supplied or used for the purposes of an election, any appliance, device or mechanism by which a ballot paper may be extracted or manipulated after having been deposited in a ballot box during the polling at any election;

shall be guilty of an offence and liable on conviction to a fine of two thousand emalangeni or, in default of payment thereof to imprisonment for two years, or both, and shall become disqualified for a period of seven years from the date of this conviction from being registered as a voter or from being elected a member and, if at that date, he has been elected as a member, his election shall be void as from the date of the conviction.

- (2) A person who attempts to commit an offence specified in this section shall be liable to the punishment prescribed for that offence.
- (3) In the prosecution for an offence in relation to a nomination paper, ballot box, ballot paper or marking instrument at an election, the property in the nomination paper, ballot box, ballot paper or marking instrument, as well as the property in the counterfoil of a ballot paper may be stated to be in the returning officer at that election.

## **Part II – Corrupt practices and other offences**

### **63. Treating**

- (1) A person who corruptly by himself or by any other person, either before, during or after an election, directly or indirectly gives or provides, or pays wholly or in part the expense of giving or providing, any food, drink, entertainment, lodging or provisions to or for a person for the purpose of corruptly influencing that person or any other person to give or refrain from giving his vote at the election, or on account of that person or any other person having voted or refrained from voting, or being about to vote or refrain from voting at the election, shall be guilty of the offence of treating.
- (2) A voter who corruptly accepts or takes any such food, drink, entertainment, lodging or provision shall be guilty of the offence of treating.
- (3) Any person contravening sub-section (1) or (2) shall be liable on conviction to a fine of two thousand emalangeni or to imprisonment for twelve months or both.

### **64. Undue influence**

- (1) A person shall be guilty of the offence of undue influence who, directly or indirectly, by himself or by any other person—
  - (a) makes use of or threatens to make use of any force, violence, or restraint upon or against a person;
  - (b) inflicts or threatens to inflict by himself or by any other person, or by any supernatural or non-natural means or pretended supernatural or non-natural means, any temporal or spiritual injury, damage, harm or loss upon or against any person; or

- (c) does or threatens to do anything to the disadvantage of any person, in order to induce or compel such person to—
  - (i) sign a nomination paper or refrain from signing a nomination paper;
  - (ii) vote or refrain from voting; or
  - (iii) refrain from claiming registration as a voter or from offering himself as a candidate for election;or on account of such person having—
  - (iv) signed or refrained from signing a nomination paper;
  - (v) voted or refrained from voting at an election;
  - (vi) refrained from claiming registration as a voter; or
  - (vii) refrained from offering himself as a candidate.
- (2) A person shall also be guilty of the offence of undue influence who, by abduction, duress, or fraudulent device or contrivance impedes or prevents the free exercise of his vote by a voter or thereby compels, induces, or prevails upon a voter either to give or to refrain from giving his vote at an election.
- (3) Any person convicted of an offence under sub-section (1) or (2) shall be liable on conviction to a fine of five thousand emalangeni or to imprisonment for five years, or both.

## 65. Bribery

- (1) A person shall be guilty of the offence of bribery who, directly or indirectly, by himself or by any other person on his behalf—
  - (a) gives, lends or agrees to give or lend or offers, promises or promises to procure, any money or other valuable consideration to or for a voter, or to or for any other person, in order to induce a voter to vote or refrain from voting or corruptly does such act on account of a voter having voted or refrained from voting at an election;
  - (b) gives or procures or agrees to give or procure, or offers, promises, or promises to procure or to endeavour to procure any office, place or employment to or for a voter or to or for any person on behalf of a voter, or to or for any other person, in order to induce the voter to vote or refrain from voting, or corruptly does such act on account of a voter having voted or refrained from voting at an election;
  - (c) makes any such gift, loan, offer, promises, procurement or agreement to or for a person in order to procure or endeavour to procure the return of any person as a member, or the vote of a voter at an election;
  - (d) upon or in consequence of any such gift, loan, offer, promise, procurement or agreement, procures or engages, promises or endeavours to procure, the return of any person as a member or the vote of a voter at an election;
  - (e) advances or pays or causes to be paid money to or to use of any other person with the intent that such money or any part thereof shall be expended in bribery at an election or who knowingly pays money or causes it to be paid to any person in discharge or repayment of money wholly or in part expended in bribery at an election;
  - (f) before or during an election, receives, agrees or contracts for any money, gift, loan or other valuable consideration, office, place or employment for himself or for any other person, for voting or agreeing to vote or for refraining or agreeing to refrain from voting at an election;

- (g) after an election, receives money or other valuable consideration on account of a person having voted or refrained from voting or having induced any other person to vote or refrain from voting at an election;
  - (h) on account of and as payment for voting or for having voted or for agreeing or having agreed to vote for a candidate at an election, or on account of and as payment for his having assisted or agreed to assist a candidate at an election, applies to that candidate or to his agent for the gift or loan of money or other valuable consideration or for any office, place or employment, or for the promise of any office, place or employment; or
  - (i) in order to induce any other person to agree to be nominated as a candidate or to refrain from becoming a candidate or to withdraw if he has become a candidate, gives or procures any office, place or employment or agrees to give or procure or offers or promises to procure or to endeavour to procure any office, place or employment to or for that person, or gives or lends or agrees to give or lend, or offers or promises to procure or to endeavour to procure money or other valuable consideration to or for any person or to or for that other person, or to or for any person on behalf of that other person.
- (2) This section shall not be construed as applying to money paid, or agreed to be paid, for or on account of lawful expenses *bona fide* incurred at or in connection with an election.
  - (3) Any person who contravenes sub-section (1) shall be liable on conviction to a fine of five thousand emalangenani or to imprisonment for five years, or both.

## 66. Personation

- (1) A person shall be guilty of the offence of personation who—
  - (a) at an election, applies for a ballot paper in the name of any other person whether that name be that of a person living or dead, or of a fictitious person; or
  - (b) having voted once at an election, applies again at the same election for a ballot paper.
- (2) A police officer may arrest without warrant a person suspected of the offence of personation.
- (3) Any person who contravenes sub-section (1) shall be liable on conviction to a fine of five thousand emalangenani or to imprisonment for five years, or both.

## 67. Penalties for corrupt and illegal practices

- (1) A person who—
  - (a) is guilty of the offence of treating or undue influence or bribery, or the offence of personation or who aids, abets, counsels or procures the commission of the offence of personation; or
  - (b) makes or publishes, before or during an election, for the purpose of effecting the return of a candidate, a false statement of fact in relation to the personal character of any other candidate at an election or for the purpose of promoting or procuring the election of a candidate, a false statement of the withdrawal of any other candidate,
 shall be guilty of a corrupt practice and liable on conviction in the cases mentioned in paragraph (a) to a fine of two thousand emalangenani or to imprisonment for twelve months, or both, and in the cases mentioned in paragraph (b) to a fine of one thousand emalangenani or to imprisonment for six months, or both.
- (2) A person who is convicted of a corrupt practice is thereby disqualified for a period of seven years from the date of his conviction from being registered as a voter or from voting at an election or from being elected a member and, if at that date he has been elected a member, his election shall be deemed void as from the date of the conviction.

- (3) A person who prints, publishes, distributes or posts up or causes to be printed, published, distributed or posted up any advertisement, handbill, placard or poster, which refers to an election and which does not bear upon its face the names and addresses of this printer and publisher, shall be guilty of an illegal practice and liable on conviction to a fine of one thousand emalangeni or to imprisonment for six months, or both.

#### **68. Meeting on premises where liquor is usually sold**

- (1) Any person who hires or uses premises or a part of premises where intoxicating liquor is sold or where it is supplied under a licence granted under the Liquor Licences Act [No. 30 of 1964](#), as a committee room or for any meeting of voters for the purpose of promoting or procuring the election of a candidate at an election or in connection with arrangements made by any person in reference to an election shall be guilty of an offence.
- (2) Any person who lets such premises or part thereof or permits the use thereof for any of the purposes mentioned in sub-section (1) knowing that it is, or is intended to be used for such purposes shall be guilty of an offence.
- (3) Any person contravening sub-section (1) or (2) shall be liable on conviction to a fine of one thousand emalangeni or to imprisonment for six months, or both.

#### **69. Penalty in respect of certain employment**

- (1) No person shall engage or employ any person in any capacity whatsoever for payment or promise of payment for the purpose of promoting or procuring the election of himself or of a candidate at an election except—
  - (a) not more than one election agent;
  - (b) not more than one polling agent and one messenger in respect of each polling station in the Inkhundla.
- (2) A person who contravenes sub-section (1) shall be guilty of an offence and liable on conviction to a fine of one thousand emalangeni or to imprisonment for six months.

#### **70. Penalty for employer not allowing employee reasonable period for voting**

- (1) An employer shall allow every voter in his employ a reasonable period for voting on polling day, and no employer shall make a deduction from the pay or other remuneration of that voter or impose upon or extract from him a penalty by reason of his absence during that period.
- (2) An employer who directly or indirectly refuses to grant, or by intimidation, undue influence, or in any other manner interferes with the granting to a voter in his employ of a reasonable period for voting as provided for in this section or who makes a deduction from the pay or other remuneration of such voter or extracts a penalty from him by reasons of his absence during that period, shall be guilty of an offence and liable on conviction to a fine of one thousand emalangeni or to imprisonment for six months, or both.

#### **71. Prohibition of flags, speaking apparatus and sale of intoxication liquor**

- (1) No person shall in a polling division furnish or supply any person with speaking apparatus with intent that on polling day it will be carried or used in polling division on any motor car, truck or other vehicle or in any other manner.
- (2) On polling day no person shall carry or use speaking apparatus on any motor car, truck or other vehicle, or in any other manner.
- (3) Sub-section (1) and (2) shall not apply to police or to such persons as the returning officer may authorize to use speaking apparatus for the orderly conduct of the election on polling day.

- (4) During the hours when a polling station is open on polling day, no person shall sell, supply or consume intoxicating liquor within a kilometre of the polling station.
- (5) No person shall, in connection with an election on nomination day or polling day, use or display any flag except those legally in use.
- (6) A person contravening the section shall be guilty of an offence and liable on conviction to a fine of five hundred emalangeni or, in default of payment thereof, to imprisonment for three months.

### **Part III – General**

#### **72. Inaccurate description of person or place**

No misnomer or inaccurate description of a person or place named or described in a voters list, notice or other document prepared or issued under or for the purposes of this Order shall in any way affect the operation of this Order in relation to that person or place if such person or place is so designated in the voters list, notice or document as to be identifiable.

#### **73. Defacement of notice**

A person who without lawful authority destroys, mutilates, or removes a notice which is exhibited under the authority of this Order, or a document which is made available for inspection in accordance with this Order, shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred emalangeni or, in default of payment thereof, to imprisonment for one month.

#### **74. Variation of period**

- (1) Any period within which an act is required to be done under this Order may be varied by Umphatsi-Lukhetfo by notice in the *Gazette*.
- (2) Such notice shall be published in the Inkhundla which will be affected by the change in such manner as Umphatsi-Lukhetfo shall direct.

#### **75. Approval of forms, and official seal (First Schedule)**

- (1) The forms mentioned in the First Schedule shall be in a form approved by Umphatsi-Lukhetfo used for the purposes indicated, and completed and in accordance with the requirements of this Order, those forms and the instructions, if any, contained thereon.
- (2) Umphatsi-Lukhetfo may approve a mark or seal as an official seal.

#### **76. Registration of photographs**

Umphatsi-Lukhetfo shall keep duly certified photographs of the candidates for use at elections.

**First Schedule**  
**Elections order**

Under Section No.	Forms and envelopes	Particulars
3(3)	8	Appointment of presiding/polling officer.
3(3)	9	Appointment of counting officer.
4(2)	10	Writ of election.
4(5)	11	Notice of election of member(s) of the House of Assembly.
5(5)	12	Nomination paper.
5(6)	13	Declaration on oath of person nomination as candidate for election.
14(1)bis	14	Ballot paper.
15(1)	15	Advice of appointment of candidates' agents and messengers.
20(1)	16	Declaration of secrecy.
25(2)	17	Directions for guidance of voters.
32(1)	18	Tendered votes list.
34(5)	19	Envelope for tendered ballot papers and tendered votes list.
35(3)	20	Voters list whose ballot papers have been marked by presiding officer.
36(2)	21	Envelope for spoilt ballot papers.

37(4)(f)	22	Ballot paper account.
37(4)(a)	23	Envelopes for appointment of presiding and polling officers and declaration of secrecy.
37(4)(a)	24	Envelope for declaration by voter, under form 40 and the second schedule.
37(4)(d)	25	Envelopes for register of voters whose ballot papers have been marked by presiding officer.
37(4)(f)	26	Envelope for ballot paper account.
37(4)(f)	27	Envelope for counterfoils of used ballot papers.
37(4)(h)	28	Envelope for marked copies of voters list under section 15 and the Second Schedule.
37(4)(i)	29	Envelope for unused ballot papers.
37(4)(j)	30	Envelope for official marking instruments.
37(4)(k)	31	Envelope for unused forms and stationery and other election material.
37(6)	32	Label for all election material, excluding ballot boxes and official seal.
36(7)	33	Envelope for official seal.
49(1)	34	Declaration of result.
52(1)(i)	35	Label for counted ordinary ballot papers.

52(1)(j)	36	Envelope for rejected ordinary ballot papers.
52(1)(k)	37	Envelope for nomination papers and withdrawal forms of candidates.
43(c)	38	Label for marked voters list.
43(c)	39	Label for all election documents.
37(4)(b)	40	Declarations on oath made in terms of section 30 (1).

## Second Schedule

### The Election order 1992

Inkhundla: \_\_\_\_\_

Polling Division: \_\_\_\_\_

Date of Poll: \_\_\_\_\_

### Declaration by a person applying to vote

#### Questions which shall be put

- Are you the person whose name appears opposite \_\_\_\_\_ No \_\_\_\_\_  
as \_\_\_\_\_ (Name) in the register of voters of this polling division?

Answer: \_\_\_\_\_

- Have you already voted at this poll at this or any other polling station?

Answer: \_\_\_\_\_

- Are you disqualified from voting on any of the grounds set out in section 10 of the Establishment of the Parliament of Swaziland Order, 1992?

52 of the Constitution? \_\_\_\_\_

*[Please note: paragraph 3 might be missing some text.]*

Answer: \_\_\_\_\_

I solemnly declare that the provisions of section 10 of the Establishment of the Parliament of Swaziland Order, 1992 have been explained to me and that my answers recorded above are true and correct.

Signature/Thumb Mark \_\_\_\_\_

Witness to thumb mark \_\_\_\_\_



The above declaration was made and signed before me at \_\_\_\_\_ this  
\_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_.

\_\_\_\_\_  
Presiding officer