

CONSTITUTION (AMENDMENT) ACT, 1997

No. 18



of 1997

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Insertion of section 65A in the Constitution
3. Amendment of section 66 of the Constitution
4. Amendment of section 67 of the Constitution

An Act to amend the Constitution

Date of Assent: 7th October, 1997.

Date of Commencement: 17th October, 1997.

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Constitution (Amendment) Act, 1997.

2. The Constitution is hereby amended by the insertion immediately after section 65 thereof, of the following new section —

“Appointment of Independent Electoral Commission 65A. (1) There shall be an Independent Electoral Commission which shall consist of —

- (a) a Chairman who shall be a judge of the High Court appointed by the Judicial Service Commission;
- (b) a legal practitioner appointed by the Judicial Service Commission; and
- (c) five other persons who are fit, proper and impartial, appointed by the Judicial Service Commission from a list of persons recommended by the All Party Conference.

(2) Where the All Party Conference fail to agree on all or any number of persons referred to in subsection (1)(c) of this section up to dissolution of Parliament, the Judicial Service Commission shall appoint such person or persons as are necessary to fill any vacancy.

(3) For the purposes of this section, “All Party Conference” means a meeting of all registered political parties convened from time to time by the Minister.

(4) The first appointments of the Chairman and the Members of the Commission shall be made not later than 31st January, 1999, and thereafter subsequent appointments shall be made at the last dissolution of every two successive lives of Parliament.

Short title

Insertion of section 65A in the Constitution

(5) The Chairman and the members of the Commission shall hold office for a period of two successive lives of Parliament.

(6) A person shall not be qualified to be appointed as a member of the Independent Electoral Commission if —

- (a) he has been declared insolvent or adjudged or otherwise declared bankrupt under any law in force in any part of the Commonwealth and has not been discharged, or has made a composition with his creditors and has not paid his debts in full; or
- (b) he has been convicted of any offence involving dishonesty in any country.

(7) A person appointed a member of the Commission shall not enter upon the duties of the office of Commissioner until he has taken and subscribed the oath of allegiance and such oath for the due execution of his office as may be prescribed by an Act of Parliament.

(8) The Commission shall regulate its own procedure and proceedings.

(9) The Chairman shall preside over all proceedings, and in his absence, the legal practitioner referred to in subsection (1)(b) shall preside over the proceedings.

(10) The quorum shall be four members, one of whom shall be the Chairman or the said legal practitioner.

(11) All issues shall be decided by the decision of the majority of the members present and voting.

(12) The Commission shall be responsible for —

- (a) the conduct and supervision of elections of the Elected Members of the National Assembly and members of a local authority, and conduct of a referendum;
- (b) giving instructions and directions to the Secretary of the Commission appointed under section 66 in regard to the exercise of his functions under the electoral law prescribed by an Act of Parliament;
- (c) ensuring that elections are conducted efficiently, properly, freely and fairly; and
- (d) performing such other functions as may be prescribed by an Act of Parliament.

(13) The Commission shall on the completion of any election conducted by it, submit a report on the exercise of its functions under the preceding provisions of this section to the Minister for the time being responsible for matters relating to such elections, and that Minister shall, not later than seven days after the National Assembly first meets after he has received the report, lay it before the National Assembly.”

3. Section 66 of the Constitution is hereby amended by substituting for that section, the following new section —

"Appointment
of Secretary to
Independent
Electoral Com-
mission

66. (1) There shall be a Secretary to the Independent Electoral Commission referred to in section 65A (in this section referred to as "the Secretary").

(2) The Secretary shall be appointed by the President.

(3) The functions of the Secretary shall, subject to the directions and supervision of the Independent Electoral Commission, be to exercise general supervision over the registration of voters for elections of —

(a) the Elected Members of the National Assembly; and

(b) the members of any local authority,
and over the conduct of such elections.

(4) A person shall not be qualified to be appointed as Secretary to the Independent Electoral Commission if —

(a) he is not a citizen of Botswana;

(b) he has been declared insolvent or adjudged or otherwise declared bankrupt under any law in force in any part of the Commonwealth and has not been discharged, or has made a composition with his creditors and has not paid his debts in full; or

(c) he has been convicted of any offence involving dishonesty in any country.

(5) A person shall not enter upon the duties of the office of Secretary until he has taken and subscribed to the oath of allegiance and such oath for the due execution of his office as may be prescribed by an Act of Parliament.

(6) For the purposes of the exercise of his functions under subsection (3) of this section, the Secretary may give such directions as he considers necessary or expedient to any registering officer, presiding officer or returning officer relating to the exercise by that officer of his functions under any law regulating the registration of voters or the conduct of elections, and any officer to whom directions are given under this subsection shall comply with those directions.

(7) Subject to the provisions of this section, a person holding office as Secretary shall vacate that office on attaining the age of 65 years or such other age as may be prescribed by an Act of Parliament.

(8) A holder of the office of Secretary may be removed from office only for inability to perform the functions of his office (whether arising from infirmity of body or mind or from any other cause) or for misbehaviour, and shall not be so removed except in accordance with the provisions of this section.

Amendment
of section 66
of the
Constitution

(9) If the President considers that the question of removing the Secretary ought to be investigated then —

(a) he shall appoint a tribunal which shall consist of a Chairman and not less than two members who hold or have held high judicial office;

(b) the tribunal shall enquire into and report on the facts thereof to the President and advise the President whether the Secretary ought to be removed from office under this section for inability to perform the functions of his office or for misbehaviour.

(10) Where a tribunal appointed under subsection (9) advises the President that the Secretary ought to be removed for inability to perform the functions of his office or for misbehaviour, the President shall remove him from office.

(11) If the question of removing the Secretary from office has been referred to a tribunal under subsection (9) of this section, the President may suspend him from performing the functions of his office, and any such suspension may at any time be revoked by the President and shall cease to have effect if the tribunal advises the President that the Secretary ought not to be removed from office."

4. Section 67 of the Constitution is hereby amended —

(a) by substituting for the provisions of paragraph (b) of subsection (1) thereof, the following new provisions—

"(b) has attained the age of 18 years; and"; and

(b) by substituting for paragraph (b) of subsection (3) thereof, the following new provisions —

"(b) in the case of a person who does not have a residence in Botswana but is able to register in person, in the constituency in which he last resided, or in which he was born; or

(c) in the case of a person who is not resident in Botswana and is unable to register in person, at such place as may be prescribed by Parliament and registration at such place shall be treated as registration in the constituency in which he last resided, or in which he was born in Botswana."

PASSED by the National Assembly this 6th day of August, 1997.

C.T. MOMPEI,
Clerk of the National Assembly.