

REPUBLIC OF KENYA

PARLIAMENT

NATIONAL ASSEMBLY BILLS

(Bill No. 3 of 2022)

THE ELECTIONS (AMENDMENT) BILL, 2022

(A Bill published in the Kenya Gazette Supplement No. 12 of 2022 and passed by the National Assembly, with amendments, on April 13th, 2022)

N.A./B/No. 3/2022

THE ELECTIONS (AMENDMENT) BILL, 2022

A Bill for

AN ACT of Parliament to amend the Elections Act

ENACTED by the Parliament of Kenya as follows—

1. This Act may be cited as the Elections (Amendment) Act, 2022 and shall come into force upon publication in the *Gazette*. Short title and commencement.

2. Section 2 of the Elections Act, 2011 (hereinafter referred to as “the principal Act”) is amended by— Amendment of section 2 of No. 24 of 2011.

(a) deleting the definition of “nomination” and substituting it therefor with the following new definition—

“nomination” means the process through which a political party elects or selects its candidates for elections;

(b) deleting the definition of “nomination day”;

(c) deleting the definition of political party and substituting it therefor with the following new definition –

“political party” has the meaning assigned to it under section 2 of the Political Parties Act, No. 11 of 2011;

(d) inserting the word “valid” immediately before the words “Kenyan passport” in the definition of “identification document”; and

(e) inserting the following new definition in proper alphabetical sequence—

“registration of a candidate” means the process through which a person applies to the Commission to contest in an election.

3. Section 5 of the principal Act is amended—

Amendment of section 5 of No. 24 of 2011.

(a) in subsection (1)(b) by inserting the words “within the affected electoral area” immediately after the words “such by-election”;

(b) in subsection (1)(ba) by inserting the words “of the referendum question” immediately after the word “publication”;

(c) in subsection (3) by inserting the word “valid” immediately before the words “Kenyan passport”;

(d) by inserting the following new subsection immediately after subsection 3—

“(3A) A person who registers as a voter during the period when registration of voters is suspended for the purposes of a by-election as contemplated under subsection (1)(b) shall not be eligible to contest in the electoral area affected by the by-election”.

4. Section 6 of the principal Act is amended—

Amendment of
section 6 of No. 24 of
2011.

(a) by deleting subsection (1) and substituting therefor the following new subsections—

“(1) The Commission shall cause the Register of Voters to be opened for inspection by members of the public at all times.

(1A) The Commission shall rectify the particulars of voters at all times except—

(a) in the case of a general election or an election under Article 138(5) of the Constitution, during the sixty-day period before the date of the election;

(b) in the case of a by-election, between the date of the declaration of the vacancy of the seat concerned and the date of such by-election; or

(c) in the case of a referendum, between the date of the publication of the referendum question and the date of the referendum”.

(b) by deleting subsection (2).

5. Section 8A of the principal Act is amended—

Amendment of
section 8A of No. 24
of 2011.

(a) by deleting subsection (3); and

(b) in subsection (4), by deleting the expression “subsection (3)” and substituting therefor the expression “subsection (1)”.

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6. Section 14 of the principal Act is amended in ^{Amendment} of
subsection (2)— section 14 of No. 24
of 2011.

(a) by deleting paragraph (a) and substituting therefor
the following new paragraph—

(a) the day or days for the registration of candidates
for the presidential election;

(b) by deleting the word “nomination” appearing in
paragraph (b) and substituting therefor the words
“registration of candidates”.

7. Section 16 of the principal Act is amended in ^{Amendment} of
subsection (2)— section 16 of No. 24
of 2011.

(a) by deleting paragraph (a) and substituting therefor
the following new paragraph—

(a) the day or days for registration of candidates for
the parliamentary election;

(b) by deleting the word “nomination” appearing in
paragraph (c) and substituting therefor the words
“registrates”.

8. Section 17 of the principal Act is amended in ^{Amendment} of
subsection (2)— section 17 of No. 24
of 2011.

(a) by deleting paragraph (a) and substituting therefor
the following new paragraph—

(a) the day or days for registration of candidates for
the governor election;

(b) by deleting the word “nomination” appearing in
paragraph (b) and substituting therefor the words
“registrates”.

9. Section 19 of the Principal Act is amended in ^{Amendment} of
subsection (2)— section 19 of No. 24
of 2011.

(a) by deleting paragraph (a) and substituting therefor
the following new paragraph—

(a) the day or days for registration of candidates for
the county elections;

(b) by deleting the word “nomination” appearing in
paragraph (b) and substituting therefor the word
“registration”; and

(c) by deleting the word “nomination” appearing in paragraph (c) and substituting therefor the word “registration”.

10. Section 22 of the principal Act is amended— Amendment of
section 22 of No. 24
of 2011.

(a) in the marginal note, by deleting the word “nomination” and substituting therefor the word “registration”;

(b) in subsection (1), by deleting the word “nominated” and substituting therefor the word “registered”;

(c) in subsection (1B), by deleting the words “to nomination” and substituting therefor the words “for registration”; and

(d) in subsection (2), by deleting the word “nominated” and substituting therefor the word “registered”.

11. Section 23 of the Principal Act is amended— Amendment of
section 23 of No. 24
of 2011.

(a) in the marginal note, by deleting the word “nomination” and substituting therefor the word “registration”;

(b) in subsection (1), by deleting the word “nomination” and substituting therefor the word “registration”; and

(c) in subsection (2), by deleting the word “nomination” and substituting therefor the word “registration”.

12. Section 24 of the principal Act is amended— Amendment of
section 24 of No. 24
of 2011.

(a) in the marginal note by deleting the word “nomination” and substituting therefor the word “registration”;

(b) in subsection (1) by deleting the word “nomination” and substituting therefor the word “registration”.

13. Section 25 of the principal Act is amended— Amendment of
section 25 of No. 24
of 2011.

(a) in the marginal note by deleting the word “nomination” and substituting therefor the word “registration”;

(b) in subsection (1) by deleting the word “nomination” and substituting therefor the word “registration”.

14. Section 27 of the principal Act is amended by Amendment of section 27 of No. 24 of 2011. inserting the following new subsection immediately after subsection (1A) —

“(1B) Notwithstanding the provisions under subsection (1), a coalition political party shall within fourteen days of registration, submit to the Commission a copy of the coalition political party’s nomination rules certified by the Registrar of Political Parties”.

15. Section 31 of the principal Act is amended— Amendment of section 31 of No. 24 of 2011.

- (a) by deleting subsection (2);
- (b) by deleting subsection (2B);
- (c) by deleting subsection (2C);
- (d) by deleting subsection (2E); and
- (e) by deleting subsection (2F).

16. Section 32 of the principal Act is amended— Amendment of section 32 of No. 24 of 2011.

- (a) in subsection (1) by deleting the words “nomination day” and substituting therefor the words “the date for registration of candidates”; and
- (b) in subsection (1A) by deleting the word “nomination” and substituting therefor the words “the date for registration of candidates”.

17. Section 33 of the principal Act is amended— Amendment of section 33 of No. 24 of 2011.

- (a) in the marginal note by deleting the word “nomination” and substituting therefor the word “registration”;
- (b) in subsection (1)—
 - (i) by deleting the word “nominated” appearing in the opening paragraph and substituting therefor the word “registered”;
 - (ii) by deleting the words “nomination paper” appearing in paragraph (b) and substituting therefor the words “registration of candidates Form”;

(iii) by deleting the words “nomination day” appearing in paragraph (c) and substituting therefor with the words “date gazetted for registration of candidates”;

(iv) by deleting paragraph (d); and

(c) by deleting subsection (2).

18. The principal Act is amended by inserting the following new section immediately after section 33—

Insertion of new section 33A in No. 24 of 2011.

Publication of registered candidates.

33A. The Commission shall publish in the *Gazette* the names of political party candidates and independent candidates registered to contest in an election.

19. The principal Act is amended in section 34 by inserting the following new subsections immediately after subsection (8)—

Amendment of section 34 of No. 24 of 2011.

“(8A) A person shall not be nominated by a political party under subsection (4) unless the person is, on the date of submission of the party list by the political party, a registered voter in any of the wards in the county in which the person is to be nominated.

(8B) The nomination under subsection (4) by a political party shall, ensure equitable representation from all wards comprising the respective County”.

20. The principal Act is amended by repealing section 39 and substituting therefor the following new section—

Repeal and replacement of section 39 of No. 24 of 2011.

Determination and declaration of results.

39. (1) The Commission shall determine, declare and publish the results of an election immediately after close of polling.

(2) The Commission shall appoint constituency returning officers to be responsible for—

(a) tallying, announcement and declaration, in the prescribed form, of the final results from each polling station in a constituency for the election of a member of the National Assembly and members of the county assembly;

(b) collating and announcing the results from each polling station in the constituency for the election of the President, county

Governor, Senator and county women representative to the National Assembly; and

(c) submitting, in the prescribed form, the collated results for the election of the President to the national tallying centre and the collated results for the election of the county Governor, Senator and county women representative to the National Assembly to the respective county returning officer.

(3) The Commission shall appoint county returning officers to be responsible for tallying, announcement and declaration, in the prescribed form, of final results from constituencies in the county for purposes of the election of the county Governor, Senator and county women representative to the National Assembly.

(4) For purposes of a presidential election, the Commission shall—

(a) electronically transmit and physically deliver the tabulated results of the election, in the prescribed form, from a polling station to the constituency tallying centre and to the national tallying centre;

(b) tally and verify the results received at the constituency tallying centre and the national tallying centre; and

(c) publish the polling result forms on an online public portal maintained by the Commission.

(5) The Commission shall verify that the results transmitted under this section are an accurate record of the results tallied, verified and declared at the respective polling stations.

(6) The chairperson of the Commission shall declare the results of the election of the President in accordance with Article 138(10) of the Constitution.

(7) The Chairperson may declare a candidate elected as the President before all the

constituencies have transmitted their results if the Commission is satisfied the results that have not been received will not affect the result of the election.

(8) The Commission shall announce the final results in the order in which the tallying of the results is completed.

21. Section 44A of the principal Act is amended— Amendment of section 44A of No. 24 of 2011.

(a) by renumbering the existing provision as subsection (1);

(b) by inserting the words “and transmission of election results” immediately after the words “identification of voters”; and

(c) by inserting the following new subsection immediately after subsection (1)—

(2) The Commission shall make Regulations for the better carrying into effect the provisions of this section.

22. Section 74 of the principal Act is amended by Amendment of section 74 of No. 24 of 2011. inserting the following new subsection immediately after subsection (1)—

(1A) An electoral dispute under subsection (1) shall be lodged with the Commission within seventy-two hours after the close of registration of all candidates in that election.

23. Section 75 of the principal Act is amended by Amendment of section 75 of No. 24 of 2011. inserting the following subsection immediately after subsection (4)—

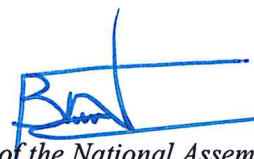
(5) The determination of the appeal under section (4) by the High Court shall be final.

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I certify that this printed impression is a true copy of the Bill passed by the National Assembly on Wednesday, 13th April, 2022


Clerk of the National Assembly

Endorsed for presentation to the Senate in accordance with the provisions of Standing Order 142 of the National Assembly.


Speaker of the National Assembly

