

GOVERNMENT NOTICE NO. 11

PARLIAMENTARY AND PRESIDENTIAL ELECTIONS ACT

(CAP. 2:01)

PARLIAMENTARY AND PRESIDENTIAL ELECTIONS (ELECTIONS COMPLAINTS AND PETITIONS HANDLING PROCEDURES) REGULATIONS, 2019

IN EXERCISE of the powers conferred by section 121 of the Parliamentary and Presidential Elections Act, I, SAMUEL BATSON TEMBENU, SC, Minister of Justice and Constitutional Affairs, make the following Regulations—

PART I—PRELIMINARY

1. These Regulations may be cited as Parliamentary and Presidential Elections (Elections Complaints and Petitions Handling Procedures) Regulations, 2019. Citation
2. In these Regulations, unless the context otherwise requires— Interpretation
 - “Act” means the Parliamentary and Presidential Elections Act;
 - “appeal” means the procedure under section 114 of the Act;
 - “Commission” bears the meaning ascribed to it under the Act;
 - “complaint” includes a challenge on actions, omissions, procedures or decisions related to the electoral process and allegations of electoral offences;
 - “election matter” means proceedings that requires the application of the Constitution or the Act due to an act or omission during the election;
 - “petition” refers to applications made to the High Court under section 100 and section 114 of the Act; and
 - “referral” means the act of directing an electoral complaint to a higher authority.

PART II—COMPLAINTS HANDLING BY THE COMMISSION

- 3.—(1) The Commission shall, in accordance with the Constitution, determine complaints and petitions related to the conduct of elections. Powers of the Commission in determining complaints
- (2) The Commission may delegate to any of its Committees, the Chief Elections Officer or any employee of the Commission, its powers and functions under these Regulations in accordance with the Electoral Commission Act. Cap. 2:03
- (3) A political party or its representative, a candidate or his representative or any other persons with sufficient interest, may lodge a complaint with the Commission on any electoral matter.
- (4) A political party or its representative, a candidate or his representative or any other persons with sufficient interest, shall not lodge a complaint under subregulation (3) in bad faith.

(5) Where the Commission is of the opinion that the complaint under this regulation has been lodged in bad faith, the Commission shall reject and dismiss the complaint and furnish the complainant with reasons, in writing, for the rejection.

Complaints
and stages
of electoral
process

4. The Commission shall determine complaints, appeals and petitions, as the case may be, arising from the following stages of the electoral process—

- (a) demarcation of boundaries for constituencies;
- (b) registration of voters;
- (c) inspection of the voter's register;
- (d) nomination of candidates;
- (e) election campaign; and
- (f) polling.

Forms

5. The Forms set out in the Schedule, or forms as near thereto as circumstances permit, shall be used in all matters to which such forms are applicable.

Demarcation of
constituencies
Cap. 2:03

6.—(1) The Commission shall, in the exercise of its powers to demarcate boundaries for constituencies under section 76(2) of the Constitution and section 8 of the Electoral Commission Act, develop objective criteria which shall be used in the determination of constituency boundaries.

(2) The Commission shall publish in the *Gazette*, the criteria developed under subregulation (1) not less than fourteen days before the commencement of the demarcation stage.

(3) In order to facilitate the orderly conduct of constituency boundary demarcation, the Commission shall apply a criteria determined for this purpose, publicise the timetable for the constituency demarcation process, specifying—

- (a) the commencement date for the fieldwork;
- (b) the consultation date with affected electoral stakeholders;
- (c) the date for the publication of draft proposals;
- (d) the closing date for submission of complaints concerning the draft boundaries; and
- (e) the date for the submission of the determined boundaries to the National Assembly as prescribed under section 76 of the Constitution.

(4) The Commission shall, within a reasonable time, investigate and determine any complaints submitted to it during the demarcation process.

(5) A person aggrieved by the determination of the Commission made under subregulation (4) may, pursuant to section 76(5) of the Constitution and within seven days of date of publication of the results, apply for judicial review of the determination.

7. A complaint on demarcation of a constituency boundary may arise from—
- (a) an alleged non-adherence to the criteria for the demarcation of the specified constituency boundaries under review;
 - (b) an alleged non-adherence to the timeframes publicised for the determination of the constituency boundaries; and
 - (c) any other ground which the Commission may consider validly falling under these Regulations.
- 8.—(1) A representative of a political party or any person who is eligible to register as a voter in Malawi, may submit a complaint to the Chairperson of the Demarcation Committee.
- (2) The complaint shall be submitted in accordance with, and contain the details specified in the prescribed Complaint Form (Form 1) contained in the Schedule hereto.
- (3) The complaint shall be submitted before the date and time determined for the submission of complaints concerning constituency and constituency boundaries and published in the *Gazette*.
- 9.—(1) The Chairperson of the Demarcation Committee shall forward a complaint to the Director responsible for Electoral Services in the Commission for investigation within seven days from the date of submission.
- (2) The Director responsible for Electoral Services, while investigating the matter, may consult affected electoral stakeholders and thereafter make his determination on the complaint within seven days of the receipt of the complaint from the office of the Chairperson of the Demarcation Committee.
- (3) The Director responsible for Electoral Services shall record the details of the determination in the prescribed Determination or Outcome Form (Form 2) contained in the Schedule hereto.
- 10.—(1) A complainant aggrieved by the determination made by the Director responsible for Electoral Services, may file an appeal to the Commission within seven days of receipt of such determination using the prescribed Appeal Form (Form 3) contained in the Schedule hereto.
- (2) The complainant shall serve the appeal in person, by fax or through the official electronic mail address of the Commission and attach to the Appeal Form, copies of the original Complaint Form and the determination made by the Director responsible for Electoral Services.
- (3) The Commission shall investigate the complaint and decide whether to uphold or reject the appeal and notify the appellant of its decision within forty-eight hours of receipt of the appeal using the prescribed Determination or Outcome Form.
- (4) The records of the appeals shall be deposited with the Chief Elections Officer, who shall give effect to those decisions.
- (5) The Chief Elections Officer shall retain and preserve the records in a safe custody without destruction for a period of twelve months or longer

Grounds for complaints at demarcation stage

Procedure for the submission of a complaint at demarcation stage

Investigation and determination of complaints at demarcation stage

Appeals on determinations made by the Director responsible for Electoral Services on complaints at demarcation stage

where the determination is challenged in court and the case is still subsisting.

Procedure for the submission of complaints at registration stage

11.—(1) A political party, representative of a political party, a person eligible to be registered as a voter, or any registered voter may submit to the Registration Officer or a duly appointed registration official at the registration centre concerned, a complaint regarding any matter pertaining to the registration process.

(2) The complaint shall be submitted in accordance with, and contain the details specified in, the prescribed Complaint Form.

(3) The duly completed Complaint Form shall be submitted to the Registration Officer or a duly appointed registration official before the date and time determined for the closure of the voter registration process.

Grounds for a complaint during registration

12.—(1) A complaint concerning registration process may arise from any of the following grounds—

(a) the omission of the name of any person in the segment of the voter's register in a constituency where the person, on the date of application for registration as a voter—

(i) is a citizen of Malawi or, if not a citizen, has been ordinarily resident in Malawi for seven years;

(ii) has attained the age of eighteen years; or

(iii) is ordinarily resident in that constituency or was born there or is employed or carries on a business there;

(b) the insertion of the name of any person in the segment of the voter's register in a constituency when that person is—

(i) under any law in force in Malawi considered or otherwise declared to be mentally incompetent;

(ii) is under sentence of death imposed by a competent court having jurisdiction in the Malawi on or before the date on which voter registration closes;

(iii) disqualified in that particular election year from registration as a voter on the grounds of his having been convicted of any violation of any law relating to elections; or

(iv) the admission of a qualified voter's registration in more than one constituency; and

(c) any other reason concerning the administrative or operational challenges connected to the registration process.

Investigation and determination of complaints on registration phase

13.—(1) A Registration Officer or a duly appointed official with whom a complaint pertaining to registration of a voter has been lodged shall investigate and make a determination on the complaint.

(2) In investigating the complaint under subregulation (1), the officer may consult with observers and political party representatives present at the registration centre.

(3) The officer shall finalize the investigation and notify the complainant of the determination within twenty-four hours of receipt of the complaint and the officer shall record determination in the prescribed Determination or

Outcome Form.

14.—(1) A complainant aggrieved by the determination of the Registration Officer made under regulation 13, may file an appeal with the Commission at its appointed address within forty eight hours of receipt of the determination using the prescribed Appeal Form.

Appeals on determinations on complaints at registration stage

(2) The complainant shall serve in person, by fax or through an official email address of the Commission and attach to the Appeal Form copies of the original complaint form and the determination by the Registration Officer.

(3) The Commission shall investigate the complaint and decide whether to uphold or reject the appeal and notify the appellant of its decision within forty-eight hours of receipt of the appeal.

(4) The Commission shall determine every appeal relating to registration of voters not later than fourteen days before the first day of polling and remedy any confirmed irregularity.

(5) The Commission shall deposit the records of appeals with the Chief Elections Officer, who shall give effect to those decisions.

(6) The Chief Elections Officer shall retain and preserve the records in safe custody without destruction for a period of twelve months.

15.—(1) The Commission shall open to inspection the voters' register for verification of entries therein by voters, representatives of political parties, or observers.

The inspection of the voters' register

(2) The Commission shall make available copies of the voters' register for inspection at appropriate public places.

(3) A complaint arising during this stage of the electoral process shall be submitted to the Centre Supervisor in accordance with the prescribed Complaint Form.

(4) A complainant may appeal against the decision by the Centre Supervisor made under subregulation (3) by lodging the appeal to the Commission in accordance with the prescribed Appeal Form.

16.—(1) A voter, a political party or a representative of a political party may file a complaint relating to inspection of voters' register where—

Procedure for submission of complaint during inspection of voters' register stage

(a) the voters' register is unavailable for inspection during a period determined for the inspection of the voters' register; or

(b) there are irregularities in the entries in the voters' register.

(2) The complainant shall submit the complaint to the Centre Supervisor of the registration centre using the prescribed Complaint Form.

17.—(1) A Centre Supervisor shall investigate any complaint pertaining to inspection of the voters' register.

Investigation and determination of complaints at inspection stage

(2) The Centre Supervisor may consult with observers and political party representatives present at the centre, before making his determination on the complaint.

(3) The Centre Supervisor shall finalize and notify the complainant of his decision within twenty four (24) hours of receipt of the complaint using a prescribed Determination or Outcome Form.

Appeals on determination of complaints at inspection stage

18.—(1) A complainant aggrieved by the decision of the Centre Supervisor may file an appeal with the Commission at its appointed office within twenty-four hours of receipt of the decision using the prescribed Appeal Form.

(2) The complainant shall serve the appeal in person, by fax or through an official email address of the Commission and attach the Appeal Form: copies of the original complaint form and the decision of the Centre Supervisor.

(3) The Commission shall determine the appeal, finalize the outcome and notify the appellant of its determination within forty-eight hours of the service of the appeal using the prescribed Determination or Outcome Form.

Procedure on complaints on nomination of candidates stage

19.—(1) A candidate, political party, or a representative of a political party may file a complaint to a Returning Officer with respect to matters pertaining to nomination of candidate.

(2) Where the Returning Officer rejects the nomination of a candidate,—

(a) the Returning Officer shall notify a candidate or his representatives in writing and give reasons for rejecting the nomination;

(b) a candidate or his representative, if they so wish, shall immediately request the Returning Officer to draw up and sign a statement of facts and his opinion thereon and transmit together with the nomination paper and any certificate or affidavit which has been lodged with such nomination paper, to the Registrar of the High Court;

(c) and the candidate or his representative does not make a request, the candidate shall be deemed not to have been duly nominated; and

(d) the Returning Officer shall serve a copy of the statement of facts referred to in paragraph (b) on the candidate or his representative and on the Commission.

(3) The High Court shall hear and make a decision on the matter and may, in its ruling, direct the Returning Officer to either accept or reject the nomination and the Returning Officer shall comply with the direction.

GN. 38 of 2017

(4) The procedure on election matters under the Courts (High Court) (Civil Procedure) Rules, 2017 shall be applicable.

Investigation and determination of complaints during election campaign stage

20.—(1) A political party, candidate or a representative of either the political party or the candidate may lodge a complaint with the Commission on violation of code of conduct and a breach of any relevant laws regulating conduct during election campaign.

(2) A complaint concerning the violation of code of conduct shall specify the nature of the violation and complaint on the breach of any relevant electoral laws shall specify the nature of the breach.

(3) A political party, a candidate or a representative of either the political

party or the candidate or any person adversely affected by such a violation or breach shall submit a complaint to the Commission using the prescribed Complaint Form.

(4) In considering the complaint, the Commission may convene hearings or consult with any of the electoral stakeholders to make an informed decision.

(5) The Commission shall communicate its decision to the complainant within three (3) days of receipt of the complaint using the prescribed Determination or Outcome Form.

(6) The Commission may refer a complaint to the law enforcement agencies if the Commission is of the view that such an action is the interest of enforcing a relevant written law or the relevant Electoral Code of Conduct.

21.—(1) A complaint concerning a vote and the voting process may arise at any time before a voter is handed a ballot paper, where—

Grounds for complaints during voting stage

(a) a voter insists on voting when he is not a registered voter;

(b) a voter insists on voting when he has already voted at that polling station or any other polling station; and

(c) any other complaint concerning voting stage.

(2) A complaint concerning a vote and the voting process may arise based on any other reason concerning the administrative and operational challenges connected to the vote and the voting process.

22.—(1) A voter, a political party, a candidate or representative of the political party or the candidate, may submit a written complaint to the Presiding Officer or a duly appointed polling officer at the polling station concerned using the prescribed Complaint Form.

Procedure for the submission of a complaint at the polling station

(2) Upon receipt, the Presiding Officer or a duly approved polling officer shall record the complaint in the log-book supplied by the Commission for this purpose in accordance with the Act.

23.—(1) A Presiding Officer or a duly appointed polling officer shall duly investigate the complaint received.

Investigation and determination of complaints at voting stage

(2) The Presiding Officer or a duly appointed polling station officer shall finalize the outcome of the investigation, summarily notify the complainant, in the presence of the representatives of a political party or independent candidate and observers present at the polling station, on or before the closure of the process of casting votes, the finalisation of the counting of results and the recording of results.

(3) The Presiding Officer or a duly appointed polling station officer shall record the outcome in the prescribed Determination or Outcome Form.

(4) A complainant aggrieved by the decision of the Presiding Officer, may refer the complaint in writing to a Returning Officer overseeing the vote and voting process within twenty-four hours of the decision of the Presiding Officer using the prescribed Referral Form (Form 4) contained in the Schedule hereto.

(5) The complainant shall serve the complaint in person, by fax or electronic mail and attach to the referral copies of the original complaint form and the decision of the Presiding Officer.

(6) The Returning Officer shall investigate the complaint, finalize the outcome and notify the complainant within forty-eight hours of receipt of the referral using the prescribed Determination or Outcome Form.

Appeals on determination of complaints during voting stage

24.—(1) A complainant aggrieved by the decision of the Returning Officer regarding a referral, may file an appeal with the Commission at its appointed address within twenty four hours of notification of the decision of the Returning Officer using the prescribed Appeal Form.

(2) The complainant shall serve in person, by fax or through the official electronic mail address of the Commission and attach to the prescribed Appeal Form, copies of the original complaint and the decisions of the Presiding Officer and the Returning Officer.

(3) The Commission shall investigate the complaint, decide whether to uphold or reject the appeal and notify the appellant within forty-eight (48) hours of receipt of the appeal.

(4) The Commission shall deposit the records of the appeals with the Chief Elections Officer, who shall give effect to those decisions.

(5) The Chief Elections Officer shall retain and preserve the records in safe custody without destruction for a period of twelve months or longer where the determination is challenged in court and the case is still subsisting.

Petitions procedure

25.—(1) Any person, alleging undue return or an undue election shall file a petition to that effect with the High Court in accordance with the Act.

(2) The Commission shall be joined as a respondent in such a petition.

GN. 38 of 2017 (3) The procedure on election matters prescribed under the Courts (High Court) (Civil Procedure) Rules, 2017 shall be applicable in handling of the petitions.

Complaints alleging election offences

26.—(1) The Commission shall refer any complaint that alleges commission of an electoral offence contrary to the electoral laws to law enforcement agencies.

(2) The Commission shall cooperate with the law enforcement agencies, courts or any other institution to ensure that electoral offences are investigated and prosecuted.

SCHEDULE

FORMS

ELECTORAL COMMISSION

FORM 1

reg. 8(2), 11(2), 15(3),
16(2), 20(3), (22(1))

COMPLAINT FORM

You may ask for assistance from the Electoral Commission official or a member of your family to help you complete this form at the registration centre.

Council name and code.....

Constituency name and code.....

Ward name and code.....

Centre name and code.....

Nature of complaint (tick appropriate box)

Demarcation

Inspection

Polling

Registration

Campaign

Other

Complainant's name & surname:.....

Complainant's contact details:.....

Reason for the complaint:.....

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Received by:.....

Received date and time:.....

Investigation and response by:.....

Response: Time and Date:.....

Received by:.....

Submission date and time:.....

ELECTORAL COMMISSION

FORM 2

reg. 9 (3), 10(3), 13(3), 17(3),

18(3), 20(5), 23(3) & (6)

DETERMINATION OR OUTCOME FORM

Council name and code.....

Constituency name and code.....

Ward name and code.....

Centre name and code.....

The complaints concerns (tick appropriate box)

Demarcation

Inspection

Polling

Registration

Campaign

Other

Investigation of the complaint

What are the relevant facts established through the investigation?

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Witnesses to the investigation

Were party representatives or a voter consulted on the complaint? Yes..... No.....

Were observers consulted on the complaint? Yes..... No.....

Name of party representatives, voters or observers consulted and their contract details:

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.....

Decision/Outcome.....

Uphold the complaint (complaint is valid) Yes..... No.....

Dismiss the complaint (complaint is not valid) Yes..... No.....

Any other comment(s)

.....
Name of other/Representative of the Commission:.....

Signature: Date:.....

NB: Additional sheets may be attached to this form where the space provided is inadequate.

Submitting complaints, referrals or appeals in bad faith or with the purpose of paralyzing the vote and the voting process constitutes an offense which is punishable in law. You are warned to refrain from such conduct.

ELECTORAL COMMISSION

FORM 3

reg. 10 (1), 14(1), 15(4),

18(1),24(1)

APPEAL TO THE COMMISSION FORM

Council name and code.....

Constituency name and code.....

Ward name and code.....

Centre name and code.....

A checklist concerning the appeal:

Mark One Box Only

Is the appeal submitted in person, or by fax or email? Fax Email In person

Is the appeal accompanied by the original complaint form lodged? Yes No

Is the appeal accompanied by the decision (s) being appealed against? Yes No

Is the appeal submitted within the prescribed time for appealing? Yes No

Reason for the Appeal

What are the grounds for submission of appeal?

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Name of Appellant:.....

Signature: Date:.....

NB: This complaint must be submitted within the prescribed time for lodging an appeal.

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ELECTORAL COMMISSION

FORM 4

reg. 23(4)

THE REFERRAL OF COMPLAINT FORM

Council name and code.....

Constituency name and code.....

Ward name and code.....

Centre name and code.....

A checklist concerning the referral: Mark One Box Only

Is the referral submitted in person? Yes No

Is the referral accompanied by the original complaint form? Yes No

Is the referral accompanied by the decision of at first instance? Yes No

Is the referral submitted within the prescribed time? Yes No

Reason for the referral

What are the grounds for submission of referral?

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Name of Complainant:.....

Signature: Date:.....

*NB: This complaint must be submitted within the prescribed time under the Regulations.
Submitting complaints, referrals or appeals in bad faith or with the purpose of paralyzing
the election
process constitutes an offense which is punishable in law. You are warned to refrain from
such a behaviour.*

Made the 26th day of April, 2019.

SAMUEL B. TEMBENU, SC
*Minister of Justice and
Constitutional Affairs*

(FILE NO. SUB. D. 2:01)