

# ELECTION OFFENCES ACT 1954

## ACT 5

### PART I

#### *PRELIMINARY AND INTERPRETATION*

#### 1. Short title and application.

This Act may be cited as the **Election Offences Act 1954**, and shall apply throughout Malaysia.

#### 2. Interpretation.

(1) In this Act, unless the context otherwise requires-

"approved company auditor" means a person approved as such by the Minister of Finance under section 8 of the Companies Act 1965 and whose approval has not been so revoked;

"authorized" means authorized by or under any written law relating to an election;

"campaign period" in relation to an election means the period during which any candidate or his election agent is allowed to hold election campaign in the candidate's constituency, being the period commencing from the time the returning officer declares that a poll will be taken in the constituency for which he is appointed and ending on the expiration of the day before polling day;

*[Ins. Act A1177]*

"constituency" means an area prescribed under the provisions of any written law for the purpose of an election;

"counting agent" means a person appointed by a candidate or election agent under section 14 of this Act including a person appointed to function as a counting agent in a polling centre overseas;

"election" means an election held in accordance with the provisions of any written law relating to the election of persons to be members of the Dewan Rakyat, a Legislative Assembly or a local authority;

"election agent" means the person appointed under section 12 by a candidate for election to be his agent for such election;

"Election Judge" means the Chief Justice or any Judge nominated by the Chief Justice under section 33;

"enforcement team" means an enforcement team established under section 27B;

*[Ins. Act A1204]*

"entitled" means entitled by or under any written law relating to an election;

"polling agent" means a person appointed by a candidate or election agent under section 14 of this Act including a person appointed to function as a polling agent in a polling centre overseas;

"polling day" in relation to an election means the period, which may extend over one or more days, commencing from the commencement of the day on which the taking of polls in that election is scheduled to commence and ending at the time of the declaration by the returning officer of the result of the election;

"polling district" means a part of a constituency as divided under section 7 of the Elections Act 1958;

"proper officer" means the officer or person appointed by or under any written law relating to an election to be in charge, or to have the conduct, thereof;

"returning officer" has the same meaning as in the Elections Act 1958 [Act 19];

[Ins. Act A1177]

- (2) Any word or expression used in this Act, the meaning of which is defined in any written law relating to any election, shall have the same meaning in this Act, for the purposes of and with reference to such election, as it has in the said written law; and any reference in this Act to any person or official shall be construed, for the purposes of and with reference to any election, as a reference to any equivalent person or official appointed under or by virtue of any written law relating to such election.

## PART II

### *ELECTORAL OFFENCES*

#### **3. Offences by any person.**

(1) Any person who-

- (a) knowingly makes any false statement on or in connection with any application to be placed on any register of electors;
- (b) forges or fraudulently defaces or fraudulently destroys any nomination paper, or delivers to a returning officer any nomination paper knowing the same to be forged;
- (c) forges or counterfeits or fraudulently defaces or fraudulently destroys any ballot paper or the official mark on any ballot paper;
- (d) without due authority supplies any ballot paper to any person;
- (e) sells or offers to sell any ballot paper to any person or purchases or offers to purchase any ballot paper from any person;
- (f) not being a person entitled to be in possession of any ballot paper which has been marked with any authorized mark has any such ballot paper in his possession;

- (g) puts into any ballot box anything other than the ballot paper which he is authorized by law to put in;
- (h) without due authority takes out of the polling station any ballot paper or is found in possession of any ballot paper outside a polling station;
- (i) without due authority destroys, takes, opens, or otherwise interferes with any ballot box, ballot paper or packet of ballot papers in use or intended to be used for the purposes of an election;
- (j) without due authority prints any ballot paper or what purports to be or is capable of being used as a ballot paper at an election;
- (k) for the purposes of an election, manufactures, constructs, imports, has in his possession, supplies or uses, or causes to be manufactured, constructed, imported, supplied or used, any appliance, device or mechanism by which a ballot paper may be extracted, affected or manipulated after having been deposited in a ballot box during the polling at any election;
- (l) votes at any election when he is not entitled to vote thereat;

[Am. Act A1177]

- (m) prints any advertisement, hand-bill, placard or poster which refers to an election and contains a reproduction of a ballot paper, or of what purports to be a ballot paper, to be used or likely to be used at such election;

[Am. Act A1177]

- (n) obstructs or prevents a voter who is otherwise entitled to vote from voting at an election;

or

[Ins. Act A1177]

- (o) votes in an election at more than one polling station in the same constituency or a different constituency;

- (p) causes, assists or abets in the changing, shifting, transferring or removal of electors in a manner inconsistent with the provisions of the Elections Act 1958 or regulations made thereunder; or

- (q) refuses to have his finger marked with indelible ink or fails to comply with the procedures relating to the use of indelible ink,

[Ins. Act A1177]

shall be liable, on conviction, to imprisonment for a term not exceeding two years or to a fine not exceeding five thousand ringgit or to both such imprisonment and, subject to any provision to the contrary in any written law relating to any election, until the expiration of five years from such conviction be incapable of being elected or listed as an elector or of voting at any election or of being elected at any election; if at that date he has been elected at any election, his seat shall be vacated as from the date of such conviction:

Provided that nothing in paragraph (m) shall be deemed to prohibit, during the campaign period, the printing in any such advertisement, hand-bill, placard or poster of the name or symbol of one candidate only, together with a reproduction of a cross or other mark indicating approval of any such name or symbol.

- (2) Any person who has been convicted of an offence under section 4 (1) of the Sedition Act 1948, [Act 15] which is an offence by reason of section 3 (1) (f) of that Act shall, until the expiration of five years from such conviction, be incapable of being elected at any election, and if at that date of such conviction he has been elected at any election, his seat shall be vacated from that date.

#### 4. Offences by election officers.

Any officer, clerk, interpreter or other person having any duty to perform pursuant to any written law relating to any election who-

- (a) makes, in any record, return or other document which he is required to keep or make under such written law, any entry which he knows or has reasonable cause to believe to be false, or does not believe to be true;
- (b) permits any person whom he knows or has reasonable cause to believe not to be a blind person or an incapacitated person to vote in the manner provided for blind persons or incapacitated persons;
- (c) refuses to permit any person whom he knows or has reasonable cause to believe to be a blind person or an incapacitated person to vote in the manner provided for blind persons or incapacitated persons;
- (d) wilfully prevents any person from voting at the polling station at which he knows or has reasonable cause to believe such person is entitled to vote;
- (e) wilfully rejects or refuses to count any ballot paper which he knows or has reasonable cause to believe is validly cast for any candidate in accordance with the provisions of such written law;
- (f) wilfully counts any ballot paper as being cast for any candidate, which he knows or has reasonable cause to believe was not validly cast for such candidate; or
- (g) is without reasonable cause guilty of any act or omission in breach of his official duty,

shall be liable, on conviction, to imprisonment for a term not exceeding two years or to a fine not exceeding five thousand ringgit or to both such imprisonment and fine and, subject to any specific provision to the contrary in any written law relating to any election, shall until the expiration of five years from such conviction be incapable of being registered or listed as an elector or of voting at any election or of being elected at any election, and if at that date he has been elected at any election, his seat shall be vacated from the date of such conviction.

Provided that nothing in this paragraph shall prevent the Election Commission from suspending the election officer from his duties upon a complaint being filed with the Election Commission of an offence under this section.

[Am. Act A1177]

**4A. Offence of promoting feelings of ill- will or hostility.**

- (1) Any person who, before, during or after an election, directly or indirectly, by himself or by any other person on his behalf, does any act or makes any statement with a view or with a tendency to promote feelings of ill-will, discontent or hostility between persons of the same race or different races or of the same class or different classes of the population of Malaysia in order to induce any elector or voter to vote or refrain from voting at an election or to procure or endeavour to procure the election of any person shall be liable, on conviction, to imprisonment for a term not exceeding five years or to a fine not exceeding ten thousand ringgit or to both such imprisonment and fine.
- (2) Subject to any specific provision to the contrary in any written law relating to an election, any person who is convicted of an offence under this section shall, until the expiration of five years from such conviction, be incapable of being registered or listed as an elector or of voting at an election or of being elected at an election, and if at that date he has been elected at an election, his seat shall be vacated from the date of such conviction.

[Ins. Act A1177]

**5. Maintenance of secrecy at elections.**

- (1) Every officer, clerk, interpreter, candidate, agent, technical advisor and any other person (hereinafter in this section referred to as an "authorized person") authorized to attend any proceedings connected with the issue or receipt of postal ballot papers, or at a polling station, or at the counting of the votes, shall, before so attending make an oath of secrecy substantially in Form A in the First Schedule.
- (2) Every officer, clerk, interpreter, candidate, agent, technical advisor and authorized person in attendance at a polling station shall maintain, and aid in maintaining, the secrecy of the voting in such station, and shall not communicate, except for some purpose authorized by law, before the poll is closed, to any person any information as to the name or number on the register of electors of any elector who has or has not applied for a ballot paper or voted at that station, or as to the official mark, but the total number of voters who have voted at any station at any time before the poll is closed may, in the discretion of the presiding officer, be divulged to a candidate or his agent or a police officer authorized to attend or on duty at the polling station.
- (3) No such officer, clerk, interpreter, candidate, agent, technical advisor, police officer or authorized person and no person whosoever shall attempt to obtain in the polling station information as to the candidate for whom any voter in such station is about to vote or has voted, or communicate at any time to any person any information obtained in a polling station as to the candidate for whom any voter in such station is about to vote or has voted, or as to the number of the ballot paper given to any voter at such station.

- (4) Every officer, clerk, interpreter, candidate, agent, technical advisor, police officer and authorized person, in attendance at the counting of the votes shall maintain, and aid in maintaining, the secrecy of the voting, and shall not attempt to communicate any information obtained at such counting as to the candidate for whom any vote is given by any particular ballot paper.
- (5) No person, except a presiding officer acting for a purpose authorized by any written law relating to any election or a person authorized by the presiding officer and acting for such purpose as aforesaid, shall communicate or attempt to communicate with any voter after such voter has received a ballot paper and before he has placed the same in a ballot box.
- (6) Every person attending any proceedings in connection with the issue or the receipt of ballot papers for persons voting by post shall maintain, and aid in maintaining, the secrecy of the voting and shall not without lawful excuse-
  - (a) communicate, before the poll is closed, to any person any information obtained at those proceedings as to any official perforation, stamp or mark to be used in connection with any ballot paper;
  - (b) communicate to any person at any time any information obtained at those proceedings as to the number of the ballot paper sent to any person;
  - (c) attempt to ascertain at the proceedings in connection with the receipt of ballot papers the number on any ballot paper; or
  - (d) attempt to ascertain at the proceedings in connection with the receipt of the ballot papers the candidate for whom any vote is given in any particular ballot paper or communicate any information with respect thereto obtained at those proceedings.
- (7) Any person who contravenes any of the provisions of this section shall be liable, on conviction, to imprisonment for a term not exceeding one year or to a fine not exceeding three thousand ringgit or to both such imprisonment and fine.
- (8) Notwithstanding any of the above provisions of this section, every officer, clerk, interpreter, candidate, agent, technical advisor and authorized person in attendance at a polling station, may communicate amongst themselves any information obtained in a polling station, other than information on individual ballot papers, for the purposes of the proper and lawful discharge of their duties.

[Subs. Act A1177]

#### **6. Offences against this Part.**

- (1) Every person who abets the commission of or attempts to commit an offence specified in this Part shall be liable, on conviction, to the punishment and disqualifications prescribed for that offence.

[Am. Act A1177]

- (2) Every offence under this Part shall be a seizable offence within the meaning of the Criminal Procedure Code [Act 593].

- (3) In a prosecution for an offence in relation to a nomination paper, ballot box, ballot paper or marking instrument at an election, the property in such nomination paper, ballot box, ballot paper or marking instrument, as well as the property in the counterfoil of any ballot paper, may be stated to be in the returning officer at that election.
- (4) A prosecution under this Act shall not be instituted except by or with the consent of the Public Prosecutor.
- (5) Within eight weeks from the publication of the results of the election, the Public Prosecutor shall prepare and submit a report to the Election Commission, the person or persons lodging the complaints of offences under this Act and all political parties, setting out the list and particulars of complaints of offences under this Act during the course of the election; stating particulars of the offences for which he has given consent for prosecution and setting out the reasons for those offences which he has not given such consent.

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### PART III

#### *CORRUPT PRACTICES*

##### **7. Personation.**

Every person who at an election applies for a ballot paper in the name of some other person, whether that name be that of a person living or dead, or of a fictitious person or who, having voted once at any such election, applies at the same election for a ballot paper in his own name, shall be guilty of the offence of personation.

##### **8. Treating.**

Every person who, corruptly, by himself or by any other person, either before, during or after an election, directly or indirectly gives or provides or causes to be given or provided, or is accessory to the giving or providing, or pays or engages to pay wholly or in part, the expense of giving or providing any food, drink, refreshment or provision, or any money or ticket or other means or device to enable the procuring of any food, drink, refreshment or provision, to or for any person for the purpose of corruptly influencing that person or any other person to give or refrain from giving his vote at such election or on account of any such person or any other person having voted or refrained from voting or being about to vote or refrain from voting at such election, and every elector or voter who corruptly accepts or takes any such food, drink, or refreshment or provision or any such money or ticket or who adopts such other means or device to enable the procuring of such food, drink, refreshment or provision shall be guilty of the offence of treating.

##### **9. Undue influence.**

- (1) Every person who, before, during or after an election, directly or indirectly, by himself or by any other person on his behalf, makes use of or threatens to make use of any force, violence, or restraint, or inflicts or threatens to inflict, by himself or by any other person, any temporal or spiritual injury, damage, harm, or loss upon or against any person in order to induce or compel such person to vote or refrain from voting, or on account of such person having voted or refrained from voting, at any election, or who by abduction, duress, or any fraudulent device or contrivance impedes or prevents the free exercise of the franchise of any elector or voter, or thereby compels, induces, or prevails upon any elector

or voter either to give or refrain from giving his vote at any election, or who directly or indirectly interferes or attempts to interfere with the free exercise by any person of any electoral right shall be guilty of the offence of undue influence.

*[Am. Act A1177]*

- (2) A person shall be deemed to interfere with the free exercise of the electoral right of a person within the meaning of this section who induces or attempts to induce such person to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure.

## **10. Bribery.**

The following persons shall be deemed guilty of the offence of bribery:

- (a) every person who, before, during or after an election, who directly or indirectly, by himself or by any other person on his behalf, gives, lends, or agrees to give or lend, or offers, promises, or promises to procure or to endeavour to procure, any money or valuable consideration to or for any elector or voter, or to or for any person on behalf of any elector or voter or to or for any other person, in order to induce any elector or voter to vote or refrain from voting, or corruptly does any such act as aforesaid on account of such elector or voter having voted or refrained from voting at any election;

*[Am. Act A1177]*

- (b) every person who, before, during or after an election, directly or indirectly, by himself or by any other person on his behalf, 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 any elector or voter, or to or for any person on behalf of any elector or voter, or to or for any other person, in order to induce such elector or voter to vote or refrain from voting, or corruptly does any such act as aforesaid on account of any elector or voter having voted or refrained from voting at any election;

*[Am. Act A1177]*

- (c) every person who, before, during or after an election, directly or indirectly, by himself or by any other person on his behalf, makes any such gift, loan, offer, promise, procurement, or agreement as aforesaid to or for any person in order to induce such person to procure or endeavour to procure the election of any person, or the vote of any elector or voter at any election;

*[Am. Act A1177]*

- (d) every person who, either before, or during an election, upon or in consequence of any such gift, loan, offer, promise, procurement or agreement, procures or engages, promises or endeavours to procure, the election of any person, or the vote of any elector or voter at an election;

*[Am. Act A1177]*



- (e) every person who, either before, or during an election, advances or pays or causes to be paid any money to, or to the use of, any other person with the intent that such money or any part thereof shall be expended in bribery at any election or who knowingly pays or causes to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any such election;

[Am. Act A1177]

- (f) every elector or voter who, before or during any election directly or indirectly, by himself or by any other person on his behalf, receives, agrees, or contracts for any money, gift, loan, or 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 any such election;

- (g) every person who, after any election, directly or indirectly, by himself or by any other person on his behalf, receives any money or valuable consideration on account of any person having voted or refrained from voting or having induced any other person to vote or to refrain from voting at any such election;

- (h) every person who, after an election directly or indirectly, by himself or by any other person on his behalf, on account of and as payment for voting or for having voted or for agreeing or having agreed to vote for any candidate at an election, or on account of and as payment for his having assisted or agreed to assist any candidate at an election, applies to such candidate, or to his agent or agents, for the gift or loan of any money or valuable consideration, or for the promise of the gift or loan of any money or valuable consideration or for any office, place or employment or for the promise of any office, place or employment; and

[Am. Act A1177]

- (i) every person who, either before, or during an election, directly or indirectly, by himself or by any person on his behalf, 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 such other person, or gives or lends, or agrees to give or lend, or offers, or promises to procure or to endeavour to procure any money or valuable consideration to or for any person or to or for such other person, or to or for any person on behalf of such other person.

[Am. Act A1177]

## **11. Punishment and incapacities for corrupt practice.**

- (1) Every person who-

- (a) commits the offence of personation, or aids, abets, counsels or procures the commission of the offence of personation;
- (b) commits the offence of treating, undue influence or bribery;
- (c) 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 any election

and which does not bear upon its face the names and addresses of its printer and publisher;

- (d) makes or publishes, before or during any election, for the purpose of affecting the return of any candidate, any false statement of fact in relation to the personal character or conduct of such candidate;
- (e) makes or publishes, before or during any election, for the purpose of promoting or procuring the election of any candidate, any false statement of the withdrawal of any other candidate at such election; or
- (f) being a candidate or election agent knowingly makes the declaration as to election expenses required by section 23 falsely,


shall be guilty of a corrupt practice, and shall, on conviction by a Sessions Court, be liable, in the case referred to in paragraphs (a) and (b), to imprisonment for a term not exceeding two years and to a fine of not less than one thousand ringgit and not more than five thousand ringgit, and, in any other case, to imprisonment for a term not exceeding one year and to a fine not exceeding two thousand ringgit. Offences under paragraphs (a) and (b) shall be seizable offences within the meaning of the Criminal Procedure Code.

[Am. Act A1177]

- (2) Every person who is convicted of a corrupt practice shall, subject to any specific provision to the contrary in any written law relating to any election, by conviction become incapable of being registered or listed as an elector or of voting at any election or of being elected at any election, and if at that date he has been elected at any election, his seat shall be vacated from the date of such conviction:

Provided that such disability shall cease on the expiry of five years from such conviction.

- (3) A prosecution for a corrupt practice except any corrupt practice as defined in paragraph (d) and (e) of subsection (1) shall not be instituted without the sanction of the Public Prosecutor.
- (4) Within eight weeks from the publication of the results of the election, the Public Prosecutor shall prepare and submit a report to the Election Commission, the person or persons lodging the complaints of offences under this Act and all political parties, setting out the list and particulars of complaints of offences under this Act during the course of the election; stating particulars of the offences for which he has given consent for prosecution and setting out the reasons for those offences which he has not given such consent.

 [Am. Act A1177]

#### PART IV

#### *ELECTION AGENT, ELECTION EXPENSES AND ILLEGAL PRACTICES*

#### **12. Nomination of election agent.**

- (1) On or before the day of nomination at an election a person shall be named in writing by or on behalf of each candidate as his agent for such election.
- (2) A candidate may name himself as election agent, and thereupon shall, so far as circumstances admit, be subject to this Act, both as a candidate and as an election agent, and any reference in this Act to an election agent shall be construed to refer to the candidate acting in his capacity of election agent.
- (3) On or before the day of nomination, the name and address of the election agent of each candidate shall be declared in writing by the candidate or some other person on his behalf to the returning officer, and the returning officer shall forthwith, by affixing a notice in a conspicuous place outside his office, give public notification of the name and address of every election agent so declared.
- (4) One election agent only shall be appointed for each candidate, but the appointment, whether the election agent appointed be the candidate himself or not, may be revoked and in the event of such revocation or of his death, whether such event is before, during or after the election, then forthwith another election agent shall be appointed, and his name and address declared in writing to the returning officer, who shall forthwith give public notice of the same in the manner aforesaid.
- (5) If no person's name and address has been declared as required by subsection (3), the candidate shall be deemed at that time to have named himself as election agent and to have revoked any appointment of another person as his election agent.
- (5A) Until the name and address of another election agent has been declared as required by subsection (4), the candidate shall be deemed, as from the time of the revocation of appointment or death of the election agent concerned, to have appointed himself as election agent.
- (6) Every election agent shall have, within the constituency in which he is an election agent, an office to which all claims, notices, writs, summonses and documents may be sent and the address of such office shall be declared at the same time as the appointment of the agent to the returning officer, and shall be stated in the public notification under subsection (3) with the name of the election agent and his address.
- (6A) Where a candidate is deemed under subsection (5) or (5A) to be his own election agent, his correspondence address, as stated in his nomination paper, shall be deemed for the purposes of subsection (6) to be the address of his office as election agent.

*[Am. Act A1177]*

### **13. Disqualification for appointment as election agent, etc.**

- (1) Subject to section 12 (2), a person is disqualified for being appointed as an election agent, polling agent or counting agent if-
  - (a) he is not a citizen;
  - (b) he is less than twenty-one years of age;

- (c) he has, within the period of five years immediately preceding the day of nomination at the election, been convicted of any offence involving violence or dishonesty by a court of law in any part of Malaysia and has not received a free pardon;
  - (d) he has, within the period of five years immediately preceding the day of nomination at the election, been convicted of or been released from prison after serving a sentence of imprisonment for any offence under this Act;
  - (e) he is a person whose name is registered under the Prevention of Crime Act 1959 [Act 297];
  - (f) he has, within the period of five years immediately preceding the day of nomination at the election, been convicted of an offence under section 52 (3) of the Societies Act 1966 [Act 335], or the corresponding provision of any other law relating to societies in force, in the case of an election in Sabah and Sarawak, in any part of Malaysia, and in the case of an election in West Malaysia, in any part of Malaysia or the Republic of Singapore;
  - (g) he is a person in respect of whom an order has been made under section 66 (4) of the Societies Act 1966, or the corresponding provision of any other law relating to societies in force, in the case of an election in Sabah and Sarawak, in any part of Malaysia, and in the case of an election in West Malaysia, in any part of Malaysia or the Republic of Singapore; or
  - (h) he is an undischarged bankrupt.
- (1A) In paragraphs (c), (f) and (g), of subsection (1) "part of Malaysia" means any place which is, or which at the date of the conviction or order therein mentioned was, a part of Malaysia.
- (2) No officer, clerk, interpreter or other person having any duty to perform pursuant to any written law relating to any election shall be appointed as an election agent or act as an agent of a candidate in the conduct or management of any election

#### **14. Making of appointments and contracts through election agent.**

- (1) The election agent of a candidate shall at an election —
- (a) appoint every polling agent, counting agent, technical advisor, clerk and messenger employed, whether for payment or not, on behalf of the candidate;
  - (b) hire every committee-room hired on behalf of the candidate;
  - (c) inform the presiding officer at each polling station in writing of the name and address of —
    - (i) the polling agent or agents appointed to act at that station; and
    - (ii) the counting agent or agents appointed to attend the counting of votes at that station; and
  - (d) inform the returning officer of the constituency or electoral ward concerned in writing of the name and address of the counting agent or agents appointed to attend the counting of the votes of postal voters and the official addition of votes.

[Subs. Act A1177]

- (1A) Every polling agent or counting agent of a candidate appointed under subsection (1) shall act or be present at the polling station or shall attend the counting of votes at the polling station for at least two hours and his replacement shall only be admitted to that polling station on the expiration of the two-hour period.

[Ins. Act A1177]

- (2) A contract whereby any expenses are incurred on account of or in respect of the conduct or management of an election shall not be enforceable against a candidate at such election, unless made by the candidate himself or by his election agent:

Provided that inability under this section to enforce such contract against the candidate shall not relieve the candidate from the consequences of any corrupt or illegal practice committed by his agent.

#### **15. Payment of expenses through election agent.**

- (1) Except as permitted by or in pursuance of this Act, no payment and no advance or deposit shall be made by a candidate at an election, or by any agent on behalf of the candidate, or by any other person at any time, whether before, during, or after such election, in respect of any expenses incurred on account of or in respect of the conduct or management of such election otherwise than by or through the election agent of the candidate; and all money provided by any person, other than the candidate, for any expenses incurred on account of or in respect of the conduct or management of the election, whether as gift, loan, advance, or deposit, shall be paid to the candidate or his election agent and not otherwise:

Provided that this subsection shall not be deemed to apply to any payment by the returning officer or to any sum disbursed by any person out of his own money for any small expense legally incurred by himself, if such sum is not repaid to him.

- (2) A person who makes any payment, advance, or deposit in contravention of this section or pays in contravention of this section any money so provided as aforesaid shall be guilty of an illegal practice.

#### **15A. Prohibition of certain expenses during campaign period.**

[Am. Act A1177]

- (1) No expenses shall, with a view to promoting or procuring the election of a candidate, be incurred during the campaign period, by any person other than the candidate, his election agent and persons authorized in writing by the election agent on account -

[Am. Act A1177]

- (a) of holding, convening or organising any open public meeting, open public rally, open public display or open public entertainment or giving open public address or lecture;

[Subs. Act A1177]

- (b) of printing or issuing advertisements, circulars or publications; or
- (c) of otherwise presenting to the electors the candidate or his views or the extent or nature of his backing, or disparaging another candidate:

Provided that this paragraph shall not-

- (i) restrict publication in a newspaper or other periodical of any matter relating to the election;
  - (ii) apply to expenses incurred by any person in travelling or in living away from home, or to similar personal expenses.
- (2) Where a person incurs any expenses required to be authorized by an election agent under subsection (1), he shall within fourteen days after the date of publication of the result of the election in the *Gazette* send to the election agent a return, accompanied by a declaration made by him (or in the case of an association or body of persons, a director, general manager, secretary or other similar officer thereof) verifying the return and giving particulars of the matters for which the expenses were incurred:

Provided that this subsection shall not apply to any person engaged or employed for payment or promise of payment by the candidate or his election agent.

- (3) The expenses shown in the return referred to in subsection (2) shall be included in the return made by the election agent in accordance with section 23 (1), and the authority received from the election agent shall be annexed to and deemed to form part of such return.
- (4) Any person who incurs any expenses in contravention of this section, or who makes any declaration required by subsection (2) which is false and which he either knows or believes to be false or does not believe to be true, shall be guilty of an illegal practice.

#### **16. Period for sending in claims and making payments for election expenses.**

- (1) Every payment made by an election agent in respect of any expenses incurred on account of or in respect of the conduct and management of an election shall, except where less than ten ringgit or where, from the nature of the case, such as travel by rail or postage, a receipt is not obtainable, be vouched for by a bill stating the particulars and by a receipt.
- (2) Every claim against a candidate at an election or his election agent in respect of any expenses incurred on account of or in respect of the conduct or management of such election, which is not sent in to the election agent within the time limited by this Act, shall be barred and shall not be paid; and subject to such exception as may be allowed in pursuance of this Act, an election agent who pays a claim in contravention of this section shall be guilty of an illegal practice.
- (3) Except as by this Act permitted, the time limited by this Act for sending in claims shall be fourteen days after the date of publication of the result of the election in the *Gazette*.
- (4) All expenses incurred by or on behalf of a candidate at an election, which are incurred on account of or in respect of the conduct or management of such election, shall be paid within the time limited by this Act; and, subject to such exception as may be allowed in pursuance of this Act, an election agent who makes a payment in contravention of this provision shall be guilty of an illegal practice.

- (5) Except as by this Act permitted, the time limited by this Act for the payment of such expenses as aforesaid shall be twenty-eight days after the date of publication of the result of the election in the *Gazette*.
- (6) Where it has been proved to the satisfaction of the Election Judge by a candidate that any payment made by an election agent in contravention of this section was made without the sanction or connivance of such candidate, the election of such candidate shall not be void, nor shall he be subject to any incapacity under this Act by reason only of such payment having been made in contravention of this section.
- (7) If the election agent in the case of any claim sent in to him within the time limited by this Act, disputes it, or refuses or fails to pay it within the said period of twenty-eight days, such claim shall be deemed to be a disputed claim.
- (8) The claimant may, if he thinks fit, bring an action for a disputed claim in any competent court; and any sum paid by the candidate or his agent in pursuance of the judgment or order of such court shall be deemed to be paid within the time limited by this Act, and to be an exception from the provisions of this Act, requiring claims to be paid by the election agent.
- (9) On cause shown to the satisfaction of a Judge of the High Court, such Judge on application by the claimant or by the candidate or his election agent may, by order, give leave for the payment by a candidate or his election agent of a disputed claim or of a claim for any such expenses as aforesaid, although sent in after the time in this section mentioned for sending in claims, or although the same was sent in to the candidate and not to the election agent.
- (10) Any sum specified in the order of leave may be paid by the candidate or his election agent; and when paid in pursuance of such leave shall be deemed to be paid within the time limited by this Act.

**17. Remuneration of election agent.**

So far as circumstances admit, this Act shall apply to a claim for his remuneration by an election agent and to the payment thereof in like manner as if he were any other creditor, and if any difference arises respecting the amount of such claim, the claim shall be a disputed claim within the meaning of this Act, and be dealt with accordingly.

**18. [Deleted by Act A 5].**

*[Deleted by Act A5]*

**19. Expenses in excess of maximum to be illegal practice.**

- (1) Subject to such exception as may be allowed in pursuance of this Act, no sum shall be paid and no expense shall be incurred by a candidate at an election or by his election agent or persons authorized in writing by the election agent or by the political party he represents, after the date of publication of the notice of the election in the *Gazette*, during or after an election, on account of or in respect of the conduct or management of such election, in excess of-

(a) ~~two~~ six hundred thousand ringgit in the case of an election to the Dewan Rakyat;

[Am. Act A1177]

(b) ~~one~~three hundred thousand ringgit in the case of an election to a Legislative Assembly;

[Am. Act A1177]

(c) ten thousand ringgit in the case of an election to a local authority other than a local council;

(d) three thousand ringgit in the case of an election to a local council:

Provided that paragraphs (c) and (d) shall have no application in Sabah and Sarawak.

(1A) All expenses incurred by a candidate at an election or by his election agent or persons authorized in writing by the election agent or by the political party he represents, shall be audited by an approved company auditor and shall be submitted to the Election Commission within 8 weeks of the publication of the result of the election in which he was a candidate in the Gazette.

(2) Any candidate or election agent who knowingly acts in contravention of this section shall be guilty of an illegal practice.

#### **20. Certain expenditure to be illegal practice.**

(1) No payment or contract for payment shall, for the purpose of promoting or procuring the election of a candidate at any election, be made-

(a) on account of the conveyance of electors or voters to or from the poll, whether for the hiring of vehicles, vessels or animals of transport of any kind whatsoever, or for railway fares, or otherwise; or

(b) to or with an elector or voter on account of the use of any house, land, building, or premises for the exhibition of any address, bill, or notice, or on account of the exhibition of any address, bill or notice.

(2) Subject to such exception as may be allowed in pursuance of this Act, if any payment or contract for payment is knowingly made in contravention of this section either before, during, or after an election, the person making such payment or contract shall be guilty of an illegal practice, and any person receiving such payment or being a party to any such contract, knowing the same to be in contravention of this section, shall also be guilty of an illegal practice.

(3) A person shall not let, lend, or employ for the purpose of conveyance of electors or voters to and from the poll any vehicle, vessel or animal of transport of any kind whatsoever which he keeps or uses for the purpose of letting out for hire, and if he lets, lends, or employs such vehicle, vessel or animal of transport knowing that it is intended to be used for the conveyance of electors or voters to and from the poll he shall be guilty of an illegal practice.

(4) A person shall not hire, borrow, or use for the purpose of conveyance of electors or voters to and from the poll any vehicle, vessel or animal of transport of any kind whatsoever which he knows the owner thereof is prohibited by subsection (3) to let, lend, or employ for that purpose, and if he does so he shall be guilty of an illegal practice.



(5) Nothing in subsection (3) or (4) shall prevent a vehicle, vessel or animal of transport of any kind being let to, or hired, employed, or used by an elector or voter or several electors or voters at their joint cost for the purpose of being conveyed to or from the poll.

(6) Notwithstanding anything in the preceding provisions of this section-

(a) where it is the ordinary business of an elector or voter as an advertising agent to exhibit for payment, bills and advertisements, a payment to or contract with such elector or voter, if made in the ordinary course of business, shall not be deemed to be an illegal practice within the meaning of this section;

(b) where electors or voters are unable at an election to reach their polling stations from their place or residence without crossing the sea or a branch or arm thereof or a river, means may be provided for conveying such electors or voters to their polling stations, or to enable them to cross the river in order to reach their polling stations, and the amount of payment for such means of conveyance may be in addition to the maximum amount of expenses allowed by this Act:

Provided always that such means of conveyance shall be made available equally to all such electors or voters who wish to avail themselves thereof.

## **21. Certain employment to be illegal.**

(1) No person shall, for the purpose of promoting or procuring the election of a candidate at any election, be engaged or employed for payment or promise of payment for any purpose or in any capacity whatever, except for the purpose or in the capacities following:

(a) one election agent and no more;

(b) not more than one polling agent at any one time for each polling area or polling district:

Provided that where more than one polling station is provided in any polling area or polling district, an additional polling agent may be employed in respect of each polling station; and

(c) a reasonable number of clerks and messengers having regard to the area of the constituency or electoral ward and the number of electors on the register or list of electors for such constituency or electoral ward.

(2) Subject to such exception as may be allowed in pursuance of this Act, if any person is engaged or employed in contravention of this section, either before, during, or after an election, the person engaging or employing him shall be guilty of an illegal practice.

## **22. Saving for creditors.**

The provisions of this Act prohibiting certain payments and contracts for payments, and the payment of any sum, and the incurring of expenses in excess of a certain maximum, shall not affect the right of any creditor, who when the contract was made or the expense was incurred, was ignorant of the same being in contravention of this Act.

## **22A. Exemption from stamp duty.**

Any instrument made on oath or affirmation pursuant to section 5 or 23 in any form specified in the First Schedule shall be exempt from payment of stamp duty under any written law for the time being in force relating to stamp duties.

**23. Return and declaration respecting election expenses.**

- (1) Within thirty-one days after the date of publication of the result of an election in the *Gazette* every candidate at that election or his election agent shall deposit with the State Elections Officer a true return, in this Act referred to as the "return respecting election expenses," in Form B in the First Schedule, containing detailed statements as respects that candidate of-

[Am. Act A1177]

(a) [Deleted by Act A5];

(b) [Deleted by Act A5];

(c) the disputed claims so far as the candidate or his election agent is aware;

[Am. Act A1177]

(d) all unpaid claims, if any, of which the candidate or his election agent is aware in respect of which application has been made or is about to be made to an Election Judge or Judge of the High Court;

[Am. Act A1177]

(e) all money, securities and other valuable consideration received by or promised to the candidate or his election agent from or by any other candidate or person for the purpose of expenses incurred or to be incurred on account or in respect of the management of the election, naming every person from whom the sum may have been received or by whom such sum may have been promised, showing as to each sum whether it was received as contribution, loan, deposit or otherwise;

[Am. Act A1177]

(f) the amount of expenses, if any, incurred by any person authorized by the candidate or his election agent under section 15A (1).

[Am. Act A1177]

- (2) The return respecting election expenses shall be signed by the candidate or his election agent and shall be accompanied by a statement made by the candidate and his election agent, which shall be respectively in Forms C and D in the First Schedule and shall be on oath before the Chairman or a member of the Election Commission, a Magistrate, a Justice of the Peace, a Commissioner for Oaths, or the State Elections Officer:

[Am. Act A1177]

Provided that where the candidate has named himself as election agent under section 12 (2) such statement shall be made only in Form C of the First Schedule.

- (3) If the said return and statements are not transmitted before the expiration of the time limited for the purpose, the candidate shall not after the expiration of such time sit or vote until either such return and statements have been transmitted or until the date of the allowance of such authorized excuse for failure to transmit the same as in this Act mentioned and if he sits or votes in contravention of this Act, he shall be liable on conviction, to a penalty of one thousand ringgit for every day on which he so sits or votes.

[Am. Act A1177]

- (4) If any candidate or election agent fails to comply with the requirements of subsection (1) or (2) he shall be guilty of an illegal practice and this section shall be in addition to and not in derogation of section 11.

#### **24. Publication of deposit of return, etc.**

- (1) When any return respecting election expenses and the statements made in respect thereof have been received by the State Elections Officer, he shall, as soon as may be, cause a notice of the date on which the return and statements in question were received by him and of the time and place at which they can be inspected to be fixed in some conspicuous place in his office and published in the *Gazette*.
- (2) The State Elections Officer shall preserve all such returns and statements with the bills and vouchers relating thereto and at all reasonable times during six months next after the publication in the *Gazette* of the notice mentioned in this section shall permit any person to inspect them and to make extracts therefrom on payment of a fee of ten ringgit and shall, on payment of two ringgit for each folio of one hundred words, supply a copy or copies of any part thereof; and after the expiration of the said period of six months the said documents may be destroyed or returned to the candidate if application for their return is made by the candidate before they are destroyed.

[Am. Act A1177]

#### **24A. Limitation of political propaganda on nomination day.**

- (1) No person shall, on nomination day or days —
- (a) furnish or supply any musical instrument or loud speaker to any person with intent that it shall be used by any person in any way or used in or upon any vessel, animal, motor car, truck or other vehicle; or
  - (b) use himself or use in or upon any vessel, animal, motor car, truck or other vehicle any such musical instrument or loud speaker, as, or for the purpose of, political propaganda.
- (2) No person shall, on nomination day or days, wait or loiter within a distance of fifty metres from the limit of any place of nomination.
- (3) Any person who contravenes any of the provisions of this section shall be liable, on conviction, to imprisonment for a term not exceeding one year or to a fine not exceeding three thousand ringgit or to both such imprisonment and fine.

[Ins. Act A1177]

**24B. Election campaign and limitation thereof.**

- (1) Subject to the provisions of this Act, a candidate or his election agent may hold election campaign during the campaign period.
- (2) A candidate or his election agent may, during the campaign period, open or establish or maintain offices in the constituency in which the candidate seeks election for purposes of his campaign at an election.
- (3) A candidate or his election agent may, during the campaign period —
  - (a) hold, convene or organise any open public meeting, open public rally, open public display or open public entertainment; or
  - (b) give any open public address or open public lecture,

in the constituency in which the candidate seeks election but only if he ~~holds a permit to do so issued to him by~~ has given prior notice in writing to the police officer in charge of the district where the meeting, rally, display or entertainment is to be held or the address or lecture is to be given.
- (4) A candidate or his election agent may, during the campaign period, display, furnish or distribute election campaign materials to members of the public in the constituency in which the candidate seeks election but only if he —
  - (a) holds a permit to do so issued to him by the State Elections Officer, subject to such terms and conditions as the State Elections Officer may determine; and
  - (b) has paid to the State Elections Officer a deposit of five thousand ringgit in the case of an election to the Dewan Rakyat and three thousand ringgit in the case of an election to a Legislative Assembly.
- (5) On receipt of a deposit under subsection (4), the State Elections Officer shall deal with the sum so paid in accordance with the current Government financial regulations.
- (6) Subject to the by-laws of any local authority, election campaign materials include any advertisement, leaflet, brochure, flag, ensign, banner, standard, poster, placard, handbill, label or any form of temporary billboard.

*Am. Act A1204 - Prior text read - "(6) Subject to the by-laws of any local authority, election campaign materials include any advertisement, leaflet, brochure, flag, ensign, banner, standard, poster, placard, handbill, label or any form of temporary billboard and the measurement for each*

- (a) *leaflet or brochure shall not exceed three hundred square centimetres;*
- (b) *flag, ensign, banner, standard, poster, placard, handbill or label shall not exceed three thousand square centimetres; and*
- (c) *temporary billboard shall not exceed three metres in width and twelve metres in length."*

- (7) No person shall, during the campaign period, display or affix any election campaign material within a distance of fifty metres from the limits of any polling station.
- (8) Any election campaign material displayed or affixed shall be removed by a candidate or his election agent within fourteen days after polling day and if the candidate or his election agent fails to comply with this subsection —
  - (a) the deposit paid pursuant to subsection (4) shall be forfeited and paid to the Federal Consolidated Funds; and
  - (b) the State Elections Officer shall cause all the materials to be removed within a reasonable time and the cost for the removal of such materials shall be paid out of the sum forfeited under paragraph (a).
- (9) Where the cost of removing the materials referred to in subsection (8)(b) exceeds the deposit forfeited under subsection (8)(a), the difference shall be a debt due from the candidate to the Federal Government and may be recovered from the candidate accordingly.
- (10) Any person who contravenes subsection (3), (4) or (7) shall be liable, on conviction, to imprisonment for a term not exceeding one year or to a fine not exceeding three thousand ringgit or to both such imprisonment and fine.
- (11) An offence under this section shall be a seizable offence within the meaning of the Criminal Procedure Code.

*[Ins. Act A1177]*

**25. Employers to allow employees reasonable period for voting.**

- (1) Every employer shall, on polling day, allow to every elector in his employ a reasonable period for voting, and no employer shall make any deduction from the pay or other remuneration of any such elector or impose upon or exact from him any penalty by reason of his absence during such period.
- (2) This section shall extend to employees of the successor company as defined in section 2 of the Railways (Successor Company) Act 1991 [*Act 464*] and the Sabah Railway except such as are actually engaged in the running of trains and to whom such time cannot be allowed without interfering with the manning of the trains; and the General Manager, shall, in each case, be deemed to be the employer of such employees.
- (3) Any employer who, directly or indirectly, refuses, or by intimidation, undue influence, or in any other manner, interferes with the granting to any elector in his employ, of a reasonable period for voting, as in this section provided, shall on summary conviction be liable to a fine of five thousand ringgit or to imprisonment for one year.

*[Am. Act A1177]*

- (4) This section shall not extend to such categories of employees as the Election Commission may from time to time by notification in the *Gazette* designate.
- (5) This section shall be binding on the Government of Malaysia and the Government of each State.

(6) In this section, "employer " has the same meaning as in the Employment Act 1955

*[Ins. Act A1177]*

**26. Limitation on polling day.**

(1) No person shall on polling day —

(a) hold, convene or organise in any place any form of meeting, rally, display or entertainment or give any form of address or lecture whether or not such meeting, rally, display, entertainment, address or lecture is open to or involves members of the public or otherwise;

(b) furnish or supply any musical instrument or loud speaker to any person with intent that it shall be used by any person in any way or used in or upon any vessel, animal, motor car, truck or other vehicle as, or for the purpose of, political propaganda or use himself or use in or upon any vessel, animal, motorcar, truck or other vehicle any such musical instrument or loud speaker;

(c) open or establish or maintain an office or a booth within the constituency in which a candidate seeks election for any purpose connected with an election other than the offices opened or established or maintained pursuant to section 24B(2) or committee-room hired pursuant to section 14(1)(b);

(d) use any dwelling house, shop house, hut, hall or any premises as an office or a centre of any political party in the constituency;

(e) within a distance of fifty metres from the limits of any polling station —

(i) endeavour to establish the identity of any person entering a polling station;

(ii) check on any list the name of any person entering or leaving a polling station;

(iii) solicit or persuade or attempt to persuade any person to abstain from voting at the election, or to vote or to abstain from voting for any candidate at the election;

(iv) wait or loiter except for the purpose of gaining entry to the polling station to cast his vote but nothing in this paragraph shall prevent the proper officer or any person authorized by the proper officer from carrying out his duties in relation to the conduct of an election;

*[Am. Act A1204]*

(f) on behalf of any candidate, canvass for the votes of electors in any constituency for or against any candidate or political party at an election by whatever means including visiting electors at their homes or places of work or interviewing members of the public; or

*[Am. Act A1204]*

(g) within a distance of fifty metres from the limits of any polling station and in a polling station wear, hold or carry any form or type of clothing, head covering, ornament,

rosette, water bottle or umbrella on which the name of a candidate or the name, emblem or symbol of any political party is printed or imprinted.

[Ins. Act A1204]

- (2) Any person who contravenes any of the provisions of subsection (1) shall be liable, on conviction, to imprisonment for a term not exceeding one year or to a fine not exceeding five thousand ringgit or to both such imprisonment and fine.
- (3) An offence under subsection (1) shall be a seizable offence within the meaning of the Criminal Procedure Code.

[Subs. Act A1177]

#### 26A. Booth to be provided by Election Commission.

(1) The Election Commission shall, on polling day, provide such number of booths for each polling centre which shall be situated at such places as is ~~it thinks~~ necessary for the fair and proper conduct of elections and such booth shall be located at the main entrance of the polling centre for the purpose of assisting electors to ascertain their electoral numbers in the electoral roll.

(1A) Each booth shall be equipped with an electronic card reader which shall be used to validate the electors' identification documents issued by the National Registration Department.

(1B) Only identification documents bearing a photograph and issued by the National Registration Department shall be accepted as proof of identity at the booth. Any voter producing a temporary identification document issued by the National Registration Department shall be required to complete Form 11 as specified in Elections (Registration of Electors) Regulations 2002 ("Form 11") and shall also produce his photograph, which shall then be affixed to the completed Form 11 to be thereafter submitted to the presiding officer and a copy of the duly completed Form 11 shall be made available to the polling agent in the polling centre.

- (2) The election agent of a candidate shall appoint not more than ~~four~~ <sup>EIGHT ?</sup> eight persons to act as booth observers on behalf of the candidate, and shall, before the opening of the poll inform the presiding officer at each polling station in writing of the name and address of the booth observers appointed to be present at the booths in respect of the polling station.
- (3) Every booth observer of a candidate appointed under subsection (2) shall be present at the booth for at least two hours and up three booth observers may be appointed to be present at any one time and his or their replacement shall only be admitted to the booth on the expiration of the two-hour period.

[Subs. Act A1177]

- (4) The election agent of a candidate, may appoint not more than four persons to act as technical advisers to furnish technical advisory services on behalf of the candidate, and

shall before the opening of the poll inform the presiding officer at each polling station in writing of the name and address of the technical advisors appointed to be present at the booths in respect of the polling station.

- (5) Every booth observer and technical adviser shall be permitted to bring in the necessary equipment for the discharge of their duties, including mobile devices, audio or visual recording devices and computing devices.

**26B. (Deleted).**

*[Deleted by Act A1177]*

**27. Punishment for conviction for illegal practice.**

- (1) Every person who commits an illegal practice shall, on conviction by a Sessions Court, be liable to a fine of five thousand ringgit and, subject to any specific provision to the contrary in any written law relating to any election, shall by conviction until the expiration of five years from such conviction become incapable of being registered or listed as an elector or of voting at any election under this Act or of being elected at any election, and if at that date he has been elected at any election, his seat shall be vacated from the date of such conviction.
- (2) A prosecution for an illegal practice shall not be instituted without the sanction of the Public Prosecution.
- (3) Within eight weeks from the publication of the results of the election, the Public Prosecutor shall prepare and submit a report to the Election Commission, the person or persons lodging the complaints of offences under this Act and all political parties, setting out the list and particulars of complaints of offences under this Act during the course of the election; stating particulars of the offences for which he has given consent for prosecution and setting out the reasons for those offences which he has not given such consent.

*[Am. Act A1177]*

**PART IVA**

**ENFORCEMENT TEAM**

**27A. Interpretation in relation to this Part.**

In this Part, unless the context otherwise requires—

"area of control" , in relation to an enforcement team, means the area referred to in section 27D;



"candidate" includes an election agent of a candidate and any person appointed by a candidate or his election agent;

"political party's representative" means the representative of a political party taking part in the election, appointed by the candidate or his election agent to be a member of the enforcement team under section 27C (1)(d) and includes his replacement appointed under section 27F(4).

*[Ins. Act A1204]*

**27B. Establishment of enforcement team.**

The Election Commission may, if the Commission considers it necessary, establish an enforcement team or any number of enforcement teams for the purpose of monitoring and controlling the activities of the candidates during the campaign period until the expiration of the polling day.

*[Ins. Act A1204]*

**27C. Membership of the enforcement team.**

(1) An enforcement team shall consist of—

- (a) an enforcement officer appointed under section 3(d) of the Elections Act 1958;
- (b) a representative, who is not below the rank of Inspector, of the Commanding Officer of the police district in the area of control, or if the area of control covers more than one police district, of the Commanding Officer of each of the police districts;
- (c) a representative of the local authority in the area of control, or if the area of control covers more than one local authority area, of each of the local authorities; and
- (d) political party's representative who is appointed by a candidate or his election agent in writing.

(2) The enforcement officer referred to in subsection (1)(a) shall be the leader of the enforcement team.

*[Ins. Act A1204]*

**27D. Area of control of the enforcement team.**

An enforcement team shall perform its functions in the Parliamentary constituency for which the team is established, including the State constituencies within the Parliamentary constituency.

*[Ins. Act A1204]*

**27E. Functions of the enforcement team.**

The functions of the enforcement team are—

- (a) to patrol, and to monitor the activities of the candidates, in its area of control to ensure that written laws relating to elections are being complied with;

- (b) to bring down or cause to be brought down immediately any campaign material in its area of control which contravenes or does not comply with any written laws relating to elections;
- (c) to stop or cause to be stopped any open public address or lecture held in its area of control which contravenes or does not comply with any written laws relating to elections, and, if it is necessary to detain any person involved with the open public address or lecture, to request a police officer to detain such person; and
- (d) to control and coordinate the carrying out of any campaign activity specified in any written law relating to elections in its area of control.

[Ins. Act A1204]

**27F. Appointment of the representative of the political party.**

- (1) For the purpose of section 27C(d), a candidate or his election agent shall notify in writing the name of the political party's representative appointed by him or his election agent to the returning officer on nomination day.
- (2) Subject to subsection (4), the person appointed as the political party's representative shall remain as such representative throughout the campaign period until the expiration of the polling day.
- (3) The returning officer shall give a written notice to every political party's representative that has been appointed informing him to present himself at such time and such place as are specified in the notice in order to carry out his duties as a member of the enforcement team.
- (4) If the person appointed to be a political party's representative dies, becomes ill or for any other reason is incapable of carrying out his duties as a member of the enforcement team, the candidate or his election agent may appoint another person to replace the first mentioned person as a political party's representative and shall immediately notify the name of the replacement to the returning officer.
- (5) If a political party's representative does not present himself at the time and place as are specified in the notice given by the returning officer under subsection (3), the enforcement team shall continue to perform its functions without the presence of such representative and any decision made by the members of the enforcement team who are present shall be deemed to have been agreed to by the member who is not present.

[Ins. Act A1204]

**27G. Decision of the enforcement team.**

- (1) Every decision or action to be taken by the enforcement team in the performance of its functions shall be by mutual agreement between all members of the enforcement team who are present.

- (2) If a mutual agreement between all members of the enforcement team who are present cannot be obtained, the leader of the enforcement team shall have the power to make any decision or to direct any action to be taken by the enforcement team.
- (3) Before making any decision or issuing any direction under subsection (2), the leader of the enforcement team shall previously obtain the advice of the State Elections Officer, or if the State Elections Officer is not available, of the returning officer.
- (4) A decision or direction of the leader of the enforcement team shall be final and binding upon all members of the enforcement team.
- (5) No decision or action to be taken by the enforcement team shall be questioned on the ground of any non-attendance of any member of the enforcement team.

*[Ins. Act A1204]*

**27H. Complaint to the returning officer.**

- (1) Subject to subsection (2), any person or political party may make any complaint on the activities of a candidate during the campaign period to the returning officer.
- (2) The returning officer shall direct the enforcement team to patrol the area in respect of which the complaint is made for the purpose of ensuring that written laws relating to elections are being complied with.

*[Ins. Act A1204]*

**PART V**

***EXCUSE FOR CORRUPT OR ILLEGAL PRACTICE***

**28. Report exonerating candidate in certain cases of corrupt and illegal practice by agents.**

Where, upon the trial of an election petition respecting an election, the Election Judge reports that a candidate of such election has been guilty by his agents of the offence of treating or undue influence or of any other corrupt or illegal practice in reference to such election, and the Election Judge further reports, after giving the Attorney General, or in the case of an election to the Legislative Assembly in Sabah and Sarawak, the State Attorney General, an opportunity of being heard, that the candidate has proved to the Court-

- (a) that no corrupt or illegal practice was committed at such election by the candidate or his election agent and the offences mentioned in the said report were committed contrary to the orders and without the sanction or connivance of such candidate or his election agent;
- (b) that such candidate and his election agent took all reasonable means for preventing the commission of corrupt and illegal practices at such election;
- (c) that the offences mentioned in the said report were of a trivial, unimportant and limited character; and

- (d) that in all other respects the election was free from any corrupt or illegal practice on the part of such candidate and of his agents,

then the election of such candidate shall not, by reason of the offences mentioned in such report, be void, nor shall the candidate be subject to any incapacity under this Act.

**29. Power to except innocent act from being illegal practice, etc.**

Where, on application made, it is shown to an Election Judge or to a Judge of the High Court by such evidence as seems to the Judge sufficient-

- (a) that any act or omission of a candidate at any election, or of his election agent or of any other agent or person, would, by reason of being the payment of a sum or the incurring of expense in excess of any maximum amount allowed by this Act, or of being payment, engagement, employment, or contract in contravention of this Act, or of otherwise being in contravention of any of the provisions of this Act, be, but for this section, an illegal practice; and
- (b) that any such act or omission arose from inadvertence or from accidental miscalculations or from some other reasonable cause of a like nature, and, in any case, did not arise from any want of good faith,

and in the circumstances it seems to the Judge, after giving the candidates, the returning officer, and any elector within the constituency or electoral ward an opportunity of being heard, to be just that the candidate in question and the said election and other agent and person, or any of them, should not be subject to any of the consequences under this Act of the said act or omission, the Judge may make an order allowing such act or omission to be an exception from the provisions of this Act which would otherwise make the same an illegal practice, payment, employment, or hiring, and thereupon such candidate, agent or person shall not be subject to any of the consequences under this Act of the said act or omission.

**30. Authorized excuse for non-compliance with provisions as to return and declaration respecting election expenses.**

- (1) Where the return and statements respecting election expenses of a candidate at an election have not been transmitted as required by this Act, or being transmitted contain some error or false statement, then-
- (a) if the candidate applies to an Election Judge or a Judge of the High Court and shows that the failure to transmit such return and declarations, or any of them, or any part thereof, or any error or false statement therein, has arisen by reason of his illness, or of the absence, death, illness, negligence or misconduct of his election agent or of any clerk or officer of such agent, or by reason of inadvertence or any reasonable cause of a like nature, and not by reason of any want of good faith on the part of the applicant; or
- (b) if the election agent of the candidate applies to an Election Judge or a Judge of the High Court and shows that the failure to transmit the return and statements which he was required to transmit, or any part thereof, or any error or false statement therein, arose by reason of his illness, or of the death, illness, negligence or misconduct of any prior election agent of the candidate, or of the absence, death, illness or misconduct of any clerk, or officer of an election agent of the candidate, or by reason of inadvertence or of any reasonable cause of a like nature, and not by reason of any want of good faith on the part of the applicant,

the Judge may, after such notice of the application, and on production of such evidence of the grounds stated in the application and of the good faith of the application, and otherwise, as to the Judge seems fit, and after giving the other candidates, the State Elections Officer and any elector within the constituency or electoral ward an opportunity of being heard, make such order for allowing an authorized excuse for the failure to transmit such return and statements, or for an error or false statement in such return and statements, as to the Judge seems just.

- (2) Where it appears to the Judge that any person, being or having been election agent, has refused or failed to make such return or supply such particulars as will enable the candidate and his election agent, respectively, to comply with the provisions of this Act as to the return and statements respecting election expenses, the Judge before making an order allowing the excuse as in this section mentioned shall order such person to attend before the Judge, and shall, unless he attends and shows cause to the contrary, order him to make the return and statements, or to deliver a statement of the particulars required to be contained in the return, as to the Judge seems just, and to make or deliver the same within such time and to such person and in such manner as the Judge may direct, or may order him to be examined with respect to such particulars, and, in default of compliance with any such order, such person shall be guilty of an illegal practice.
- (3) The order may make the allowance conditional upon the making of the return and statements in a modified form or within an extended time, and upon the compliance with such other terms as to the Judge seems best calculated for carrying into effect the objects of this Act, and an order allowing an authorized excuse shall relieve the applicant for the order from any liability or consequences under this Act in respect of the matter excused by the order; and where it is proved by the candidate to the Judge that any act or omission of the election agent in relation to the return and statements respecting election expenses was without the sanction or connivance of the candidate, and that the candidate took all reasonable means for preventing such act or omission, the Judge shall relieve the candidate from the consequences of such act or omission on the part of his election agent.
- (4) The date of the order, or, if conditions and terms are to be complied with, the date at which the applicant fully complies with them, is referred to in this Act as the date of the allowance of the excuse.

### **30A. Period for making application for excuse.**

An application for an authorized excuse under section 30 shall be made before the expiration of the period of thirty-one days that is specified in section 23 and a copy of the application shall be served on the State Elections Officer.

*[Ins. Act A1204]*

## **PART VI**

### ***GROUNDS FOR AVOIDING ELECTIONS***

### **31. Avoidance by conviction of candidate.**

- (1) The election of a candidate at any election is avoided by his conviction for any corrupt or illegal practice at such election.

*[Am. Act A1177]*

(2) Within fourteen days of the conviction by a Sessions Court of a candidate for any corrupt or illegal practice at an election, the Sessions Court Judge or the Registrar of the Sessions Court shall certify the Court's determination —

(a) to the Election Commission in the case of an election of a person to be a member of the Dewan Rakyat, a Legislative Assembly, a local authority under the jurisdiction of the Federal Government or of any other election that the Election Commission may be authorized to conduct; or

(b) in the case of any other election, to the State Authority.

*[Ins. Act A1177]*

### **32. Avoidance of election on election petition.**

The election of a candidate at any election shall be declared to be void on an election petition on any of the following grounds only which may be proved to the satisfaction of the Election Judge:

*[Am. Act A1177]*

(a) that general bribery, general treating or general intimidation have so extensively prevailed that they may be reasonably supposed to have affected the result of the election;

*[Am. Act A1177]*

(b) non-compliance with the provisions of any written law relating to the conduct of any election if it appears that the election was not conducted in accordance with the principles laid down in such written law and that such non-compliance affected the result of the election;

*[Am. Act A1177]*

(c) that a corrupt practice or illegal practice was committed in connection with the election by the candidate or with his knowledge or consent, or by any agent of the candidate;

(d) that the candidate personally engaged a person as his election agent, or as a canvasser or agent, knowing that such person had within seven years previous to such engagement been convicted or found guilty of a corrupt practice by a Sessions Court, or by the report of an Election Judge; or

(e) that the candidate was at the time of his election a person disqualified for election.

## **PART VII**

### ***ELECTION PETITIONS***

### **33. Appointment and powers of Election Judge.**

(1) Every election petition shall be tried by the Chief Judge or by a Judge of any High Court nominated by the Chief Judge for the purpose:

Provided that the Chief Judge shall not nominate a Judge of a High Court of which he is not Chief Judge without consulting the Chief Judge of that High Court.

- (2) Witnesses shall be subpoenaed and sworn in the same manner as nearly as circumstances admit as in a trial by the High Court in the exercise of its original civil jurisdiction and shall be subject to the same penalties for the giving of false evidence.
- (3) On the trial of an election petition under this Act the Election Judge may, by order under his hand, compel the attendance of any person as a witness who appears to him to have been concerned in the election to which the petition refers, and any person refusing to obey such order shall be guilty of contempt of court. The Election Judge may examine any witness so compelled to attend or any person in Court, although such witness is not called and examined by any party to the petition. After the examination of a witness as aforesaid by the Election Judge, such witness may be cross-examined by or on behalf of the petitioner and respondent, or either of them.
- (4) Unless otherwise ordered by the Chief Judge, all interlocutory matters in connection with an election petition may be dealt with and decided by any Judge of the High Court whose decision shall be final.

#### **34. Who may present petition.**

An election petition may be presented to the High Court by any one or more of the following persons:

- (a) some person who voted or had a right to vote at the election to which the petition relates;
- (b) some person claiming to have had a right to be returned or elected at such election; or
- (c) some person alleging himself to have been a candidate at such election.

#### **35. Relief which may be claimed.**

All or any of the following reliefs to which the petitioner may be entitled may be claimed in an election petition:

- (a) a declaration that the election is void;
- (b) a declaration that the person was not duly elected or ought not to have been returned;
- (c) *[Deleted by Act A1177]*
- (d) where the seat is claimed for an unsuccessful candidate on the ground that he had a majority of lawful votes, a scrutiny.

#### **35A. Time for completion of trial of election petition.**

The trial of every election petition shall be completed not later than six months from the date of the presentation of the election petition.

*[Ins. Act A1177]*

#### **36. Determination of Election Judge.**

- (1) At the conclusion of the trial of an election petition, the Election Judge shall —

- (a) determine whether the candidate whose return or election is complained of was duly returned or elected or whether the election is void; and
  - (b) pronounce such determination in open court.
- (2) The Election Judge shall within fourteen days of making his determination under subsection (1) certify his determination —
- (a) to the Election Commission in the case of an election of a person to be a member of the Dewan Rakyat, a Legislative Assembly, a local authority under the jurisdiction of the Federal Government or of any other election that the Election Commission may be authorized to conduct; or
  - (b) in the case of any other election, to the State Authority.

*[Subs. Act A1177]*

**36A. Appeal.**

- (1) The petitioner or a candidate whose return or election is complained of may appeal against the determination of an Election Judge to the Federal Court.
- (2) Every appeal under this section shall be presented within fourteen days from the date of the determination of the Election Judge under section 36 and such appeal shall be presented in accordance with the rules of court applicable to appeals to the Federal Court.
- (3) The Registrar of the Federal Court shall, within fourteen days from the date of the decision of the Federal Court certify such decision —
  - (a) to the Election Commission in the case of an election of a person to be a member of the Dewan Rakyat, a Legislative Assembly, a local authority under the jurisdiction of the Federal Government or of any other election that the Election Commission may be authorized to conduct; or
  - (b) in the case of any other election, to the State Authority.

*[Ins. Act A1177]*

**36B. Time for completion of hearing of appeal.**

Notwithstanding any other law to the contrary, an appeal against the determination of an Election Judge shall be heard and decided upon by the Federal Court within six months from the date of presentation of the appeal.

*[Ins. Act A1177]*

**36C. Effect of decision of Election Judge or Federal Court.**

At the end of the period specified in section 36A(2), if there is no appeal to the Federal Court, or upon the certificate being given under section 36A(3), if there is an appeal to the Federal Court, the determination of the Election Judge or the decision of the Federal Court, as the case may be, shall be final, and the return or election shall be confirmed or the election shall be void and in such case within thirty days from the end of such period or from the date the



certificate is given, the Election Commission or the State Authority, as the case may be, shall give notice of election in the constituency or electoral ward concerned in accordance with the certificate given under section 36A(2) or (3).

*[Ins. Act A1177]*

**37. Report of Judge or Registrar as to corrupt or illegal practice.**

*[Am. Act A1177]*

- (1) At the conclusion of the trial of an election petition or of the hearing of an appeal against the determination of an Election Judge, the Election Judge or the Registrar of the Federal Court, as the case may be, shall also report in writing-

*[Am. Act A1177]*

(a) to the Election Commission, in the case of an election of a person to be a member of the Dewan Rakyat, a Legislative Assembly, the municipal council of the federal capital or of any other election that the Election Commission may be authorized to conduct; or

(b) in the case of any other election, to the State Authority-

(i) whether any corrupt or illegal practice has or has not been proved to have been committed by or with the knowledge and consent of any candidate at the election, or by his agent, and the nature of such corrupt or illegal practice, if any; and

(ii) the names and descriptions of all persons, if any, who have been proved at the trial to have been guilty of any corrupt or illegal practice.

- (2) Before any person, not being a party to an election petition nor a candidate on behalf of whom the seat is claimed by an election petition, is reported by an Election Judge or the Registrar of the Federal Court under this section, the Election Judge or the Registrar of the Federal Court shall give such person the right to be represented by counsel and an opportunity of being heard and of giving and calling evidence to show why he should not be so reported;

*[Am. Act A1177]*

- (3) When an Election Judge or the Registrar of the Federal Court reports that a corrupt or illegal practice has been committed by any person, that person shall be subject to the same incapacities as if at the date of the said report he had been convicted of that practice and a person shall be subject to the same incapacities if he was a candidate at the election and the Election Judge or the Registrar of the Federal Court reports that such corrupt or illegal practice was committed with his knowledge and consent or by his agent.

*[Am. Act A1177]*

- (4) The Election Commission or the State Authority (as the case may be) shall cause a copy of such report to be published in the *Gazette*, and it shall be the duty of every registering officer forthwith to peruse the report and forthwith to delete from the register or list of electors assigned to him the name of every person appearing from the report to be incapable of voting at an election.

### **38. Time for presentation.**

- (1) Every election petition shall be presented within twenty-one days of the date of publication of the result of the election in the *Gazette*:

Provided that-

- (a) an election petition questioning the return or the election upon the ground of a corrupt practice and specifically alleging a payment of money or other act to have been made or done since the date aforesaid by the person whose election is questioned or by an agent of the person or with the privity of the person or his election agent in pursuance or in furtherance of such corrupt practice may, so far as respects such corrupt practice, be presented at any time within twenty-eight days after the date of such payment or act;
  - (b) an election petition questioning the return or the election upon an allegation of an illegal practice may, so far as respects such illegal practice, be presented within the time following:
    - (i) at any time before the expiration of fourteen days immediately after the date of the publication in the *Gazette* of the notice required by section 24 as to the election expenses of the person whose election is questioned;
    - (ii) if the election petition specifically alleges a payment of money or other act to have been made or done since the said date by the person whose election is questioned or by an agent of the person or with the privity of the person or of his election agent in pursuance or in furtherance of the illegal practice alleged in the petition, the petition may be presented at any time within twenty-eight days immediately after the date of such payment or other act.
- (2) An election petition presented in due time may, for the purpose of questioning the return or the election upon an allegation of a corrupt or illegal practice, be amended with the leave of a Judge of the High Court within the time within which an election petition questioning the return or the election upon that ground may be presented.
  - (3) For the purposes of this section, where there is an authorized excuse for failing to make and transmit the return and statements respecting election expenses, the date of the allowance of the excuse or, if there was a failure in two or more particulars and the excuse was allowed at different times, the date of the allowance of the last excuse shall be substituted for the date of the publication of the notice mentioned in the proviso to subsection (1) (b).

### **39. Prohibition of disclosure of vote.**

No elector who has voted at any election shall, in any proceeding to question the election, be required to state for whom he has voted.

### **40. Votes to be struck off at a scrutiny.**

- (1) On a scrutiny at the trial of an election petition the following votes only shall be struck off:
  - (a) the vote of any person whose name was not on the register or list of electors assigned to the polling station at which the vote was recorded or who has not been authorized to vote at such station;

- (b) the vote of any person whose vote was procured by bribery, treating, or undue influence;
- (c) the vote of any person who committed or procured the commission of personation at the election;
- (d) where the election was an ordinary election, the vote of any person proved to have voted at such ordinary election in more than one constituency or electoral ward;
- (e) the vote of any person, who, by reason of a conviction of a corrupt or illegal practice or by reason of the report of an Election Judge, or the Registrar of the Federal Court or by reason of his conviction of an offence under section 3 was incapable of voting at the election; and

[Am. Act A11770]

- (f) votes given for a disqualified candidate by a voter knowing that the candidate was disqualified or the facts causing the disqualification, or after sufficient public notice of the disqualification, or when the disqualification or the facts causing it were notorious.

- (2) The vote of a registered elector shall not, except in the case specified in subsection (1) (e), be struck off at a scrutiny by reason only of the voter not having been or not being qualified to have his name entered on the register or list of electors.

- (3) [Deleted by Act A1177]

~~41. Rejection of ballot paper by returning officer or presiding officer to be final.~~ [Deleted by Act A5];

~~On an election petition the decision of a returning officer or presiding officer, whether or not a ballot paper shall be rejected, under any written law relating to the election, shall not be questioned.~~

**42- Procedure and practice on election petitions.**

- (1) The procedure and practice on election petitions shall be regulated by the Election Petition Rules 1954 as provided for in the Second Schedule;

[Am. Act A1177]

- (2) When any matter is not expressly provided for in the Election Petition Rules 1954, the High Court Rules 1980 [P.U.(A) 50/1980] shall apply.

[Subs. Act A1177]

(Note: All Forms and Schedules are retained unchanged)

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