

ELECTORAL (AMENDMENT) ACT, 2018

EXPLANATORY MEMORANDUM

This Act amends the Electoral Act No. 6, 2010 to further improve the electoral process.

ELECTORAL (AMENDMENT) ACT, 2018

Arrangement of Sections

Section:

1. Amendment of Electoral Act No.6, 2010.
2. Amendment of section 18.
3. Amendment of section 30.
4. Amendment of section 34.
5. Amendment of section 36.
6. Amendment of section 38.
7. Amendment of section 44.
8. Insertion of new section 51A.
9. Amendment of section 63.
10. Amendment of section 67.
11. Amendment for section 76.
12. Substitution for section 87.
13. Amendment of section 112.
14. Amendment of section 151.
15. Citation.

ELECTORAL (AMENDMENT) ACT, 2018

A Bill

For

An Act to amend the provisions of the Electoral Act No. 6, 2010 to further improve the electoral process; and for related matters.

{ Commencement

ENACTED by the National Assembly of the Federal Republic of Nigeria –

1. The Electoral Act No. 6, 2010 (in this Act referred to as “the Principal Act”) is amended as set out in this Act. Amendment of Act No. 6, 2010.
2. Section 18 of the Principal Act is amended by inserting after subsection (1), new subsections “(1A)” and “(1B)” –

“(1A) If the Electoral Officer or any other officer is satisfied as to the circumstances of the loss, destruction, defacement or damage of the voters’ card, he shall issue to the voter a replacement permanent voter card.

(1B) No person shall issue a replacement to any voter on polling day or less than 30 days before polling day.”

Amendment of section 18.
3. Section 30 (1) of the Principal Act is amended by substituting for the figure, “90”, in line 1, the figure, “150”. Amendment of section 30.
4. Section 34 of the Principal Act is amended –

(a) by inserting new subsections “(2)” – “(4)” –

“(2) Any candidate who observes his name or that of his party missing on the distribution of ballot papers list published in accordance with subsection (1), shall notify the Commission in writing, signed by himself and supported with an affidavit not later than 28 days to the election.

(3) Where the candidate fails to notify the Commission in accordance with subsection (2), the candidate shall be deemed to have waived his right.

(4) The Commission shall produce ballot papers for the relevant elections in accordance with the list published after corrections in conformity with subsection (2)”; and

(b) renumbering the section appropriately.

Amendment of section 34.
5. Section 36 of the Principal Act is amended by inserting, after subsection (2), a new subsection “(3)” – Amendment of section 36.

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“(3) If after the commencement of poll and before the announcement of the final result and declaration of a winner, a nominated candidate dies -

- (a) the Commission shall, being satisfied of the fact of the death, suspend the election for a period not exceeding 21 days;
 - (b) the political party whose candidate died may, if it intends to continue to participate in the election, conduct a fresh primary within 7 days of the death of its candidate and submit a new candidate to the Commission to replace the dead candidate; and
 - (c) subject to paragraphs (a) and (b), the Commission shall continue with the election, announce the final result and declare a winner.”
- Not in V & P

6. Section 38 of the Principal Act is amended by -

- (a) inserting new subsections “(2)” - “(5)” -

Amendment of section 38.

“(2) Where there is a valid nomination by at least one political party, failure of a political party to validly nominate a candidate does not constitute ground for extension of time for nomination or postponement of election;

(3) Polling Agents who are in attendance at a polling unit, are entitled, before the commencement of the election, to have originals of electoral materials, including ballot papers, result sheets, ballot papers’ account and verification documents and other electoral forms to be used by the Commission for the election inspected, and this process may be recorded in writing, on video or by other means by any Polling Agent, accredited observer or official of the Commission.

(4) Where it is determined that there has been a substantial noncompliance with this provision in respect of the polling, the elections at that polling unit shall be invalidated.

(5) A Presiding Officer who contravenes subsection (3) or (4), commits an offence and is liable on conviction to at least a term of one year imprisonment or a fine of N1,000,000, or both.”; and

- (b) renumbering the section appropriately.

One subsec missing old (4)

7. Section 44 of the Principal Act is amended by inserting after subsection (2), new subsections “(3)” - “(5)”.

Amendment of section 44.

“(3) The Commission shall, not later than 28 days to an election, invite in writing, a political party that nominated a candidate in the election to inspect its identity appearing on samples of relevant electoral materials proposed for the election, and the political party shall state in writing within two days of being so invited by the Commission

that it approves or disapproves of its identity as it appears on the samples.

(4) Unless the political party disapproves of its identity under subsection (3), it shall not complain of unlawful exclusion from the election under this Act in relation to its identity appearing on electoral materials used for the election.

(5) A political party that fails to comply with an invitation by the Commission under subsection (3) shall be deemed to have approved its identity on samples of electoral materials proposed to be used for an election."

8. Insert after section 51 of the Principal Act, a new section "51A"-

"Nullification
of
nomination
by the Court

51A. (1) Where the nomination of an elected candidate is nullified by the Court of first instance, and a notice of appeal against the decision is given within the stipulated period for appeal, the elected candidate shall notwithstanding the contrary decision of the court remain in office pending the determination of the appeal.

Insertion of new
section 51A.

(2) Where the Appellate Court determines that the candidate was not validly nominated, the elected candidate shall, notwithstanding the contrary decision of the Court, remain in office within the period for which an appeal may be filed and shall not be sanctioned for the benefits he derived while in office pursuant to this section, provided that where the Appellate Court in this instance is the Supreme Court, the candidate shall cease to hold office.

9. Section 63 of the Principal Act is amended by substituting for subsection (4), a new subsection "(4)" -

"(4) Presiding Officer shall announce the result at the polling unit and transmit same in the manner prescribed by the Commission."

Amendment of section
63.

10. Section 67 of the Principal Act is amended by inserting new subsections "(4)"-
"(6)" -

Amendment of section
67.

"(4) A Collation Officer or Returning Officer at an election shall collate and announce the result of an election, subject to his verification and confirmation that the -

(a) number of accredited voters stated on the collated result are correct and consistent with the number of accredited voters recorded and transmitted directly from polling units under section 49 (2) of this Act; and

(b) votes stated on the collated result are correct and consistent with the votes or results recorded and transmitted directly from polling units under section 63 (4) of this Act.

(5) Subject to subsection (1), a Collation Officer or Returning Officer shall use the number of accredited voters recorded and transmitted directly from polling units under section 49 (2) of this Act and the votes or results recorded and transmitted directly from polling units under section 63 (4) of this Act to collate and announce the result of an election if a collated result at his or a lower level of collation is not correct.

(6) A Returning Officer or Collation Officer, who intentionally collated or announced false result, commits an offence and is liable on conviction to a term of at least five years imprisonment, or a fine of not less than N10,000,000."

11. Section 76 of the Principal Act is amended by -

Amendment of section
76.

(a) inserting immediately after section 76, a new subsection "(2)" -

"(2) An election conducted at a polling unit without the prior recording in the forms prescribed by the Commission of the quantity, serial numbers and other particulars of results sheets, ballot papers and other sensitive electoral materials made available by the Commission for the conduct of the election shall be invalid provided that the election should not be invalidated where it is determined that the extent of the non-compliance is not such that would affect the integrity of the process at the polling unit."; and

(b) renumbering the section appropriately.

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12. Substitute for section 87 of the Principal Act, a new section "87".

"Nomination
of candidate
by parties

Substitution for section
87.

87. (1) A political party seeking to nominate candidates for elections under this Act shall hold direct or indirect primaries for aspirants to all elective positions, which shall be monitored by the Commission and the result of every primary to elect candidates for an election to be conducted by the Commission shall be endorsed or certified by the Commission.
- (2) A political party shall not impose nomination qualification or disqualification criteria, measures, or conditions on any aspirant or candidate for any election in its constitution, guidelines, or rules for nomination of candidates for elections, except as prescribed under sections 65, 66, 106, 107, 131, 137, 177 and 187 of the Constitution of the Federal Republic of Nigeria.
- (3) For the purpose of nomination of candidates for election, the total fees, charges, dues and any payment howsoever named imposed by a political party on an aspirant or candidate shall not exceed:
- (a) N150,000 for a Ward Councillorship aspirant in the Federal Capital Territory (FCT);
 - (b) N250,000 for an Area Council Chairmanship aspirant in the FCT;
 - (c) N500,000 for a House of Assembly aspirant;
 - (d) N1,000,000 for a House of Representatives aspirant;
 - (e) N2,000,000 for a Senatorial aspirant;
 - (f) N5,000,000 for a Governorship aspirant; and
 - (g) N10,000,000 for a Presidential aspirant.
- (4) Any requirement, criterion, measures, or condition for the nomination of candidates for elections outside the provisions of subsections (2) or (3) shall be invalid.
- (5) Every political party shall publish the venues, dates, times, guidelines, procedures and other relevant information of its primaries, conventions or any event conveyed for the purpose of nominating candidates for the party in at least two national newspapers and, at least, ten days before the date of the event to nominate candidates for the party.
- (6) A political party that adopts the system of direct primaries for the nomination of its candidate for an election shall ensure that all aspirants are given equal opportunity of being voted for by registered members of the party and comply with the following procedure—

(a) in the case of nominations to the position of presidential candidate in a presidential election, a political party shall, where it intends to sponsor a candidate -

(i) conduct direct primaries in the registration areas in the 36 States of the Federation and the FCT where all registered members of the party are eligible to vote and may freely vote for any Presidential aspirant of their choice,

(ii) declare the presidential aspirant with the highest number of valid votes cast during the primaries across the 36 States of the Federation and the FCT as the winner of the presidential primaries,

(iii) hold a National Convention where it shall present the winner of the primaries to the public as the presidential candidate of the party, and

(iv) forward the name of the winner of the presidential primaries to the Commission as the presidential candidate of the party in the presidential election;

(b) in the case of nomination to the position of governorship candidate in a governorship election in a State, a political party shall, where it intends to sponsor a candidate -

(i) conduct direct primaries in the registration areas in each Local Government Area in the particular State where all registered members of the party in the State are eligible to vote and may freely vote for any governorship aspirant of their choice,

(ii) declare the governorship aspirant with the highest number of valid votes cast in all Local Government Areas in the particular State as the winner of the governorship primaries in the State,

(iii) hold a State Congress where it shall present the winner of the governorship primaries to the public as the governorship candidate of the party in the governorship election, and

(iv) forward the name of the winner of the primaries to the Commission as the governorship candidate of the party in the election for the State;

(c) in the case of nominations to the position of Senatorial candidate, House of Representatives candidate and State House of Assembly candidate for a Senatorial District, a Federal Constituency and a State House Constituency respectively, a political party shall, where it intends to sponsor candidates in elections for these elective positions -

- (i) conduct direct primaries in the registration areas in each Local Government Area in the Senatorial District where all registered members of the party in the Senatorial District are eligible to vote and may freely vote for any Senatorial aspirant of their choice,
- (ii) conduct direct primaries in the registration areas in each Local Government Area in the Federal Constituency where all registered members of the party in the Federal Constituency are eligible to vote and may freely vote for any House of Representatives aspirant of their choice,
- (iii) conduct direct primaries in the registration areas in each Local Government Area in the State Assembly Constituency where all registered members of the party in the State Assembly Constituency are eligible to vote and may freely vote for any State House of Assembly aspirant of their choice,
- (iv) subject to subparagraph (i), declare the Senatorial aspirant with the highest number of valid votes cast in all Local Government Areas in the particular Senatorial District as the winner of the primaries in the Senatorial District and forward the name of the winner to the Commission as the Senatorial candidate of the party in the election for the Senatorial District,
- (v) subject to subparagraph (ii), declare the House of Representatives aspirant with the highest number of votes in all Local Government Areas in the Federal Constituency as the winner of the primaries in the Federal Constituency and forward the name of the winner to the Commission as the House of Representatives candidate of the party in the election for the Federal Constituency, and
- (vi) subject to subparagraph (iii), declare the State House of Assembly Aspirant with the highest number of votes in all Local Government Areas in the House of Assembly Constituency as the winner of the primaries in the House of Assembly Constituency and forward the name of the winner to the Commission as the State House of Assembly Candidate of the party in the election for the State Assembly Constituency;
- (d) in the case of the position of a Chairmanship candidate of an Area Council in the Federal Capital Territory, a political party shall, where it intends to sponsor a candidate -
 - (i) conduct direct primaries in the registration areas in the Area Council, where all registered

members of the party in the Area Council are eligible to vote and may vote for any chairmanship aspirant of their choice;

(ii) declare the chairmanship aspirant with the highest number of votes in all registration areas in the Area Council as the winner of the chairmanship primaries in the Area Council and forward the name of the winner of the chairmanship primaries to the Commission as the chairmanship candidate of the party in the election for the Area Council.

(7) A political party that adopts the system of indirect primaries for the nomination of its candidates for election shall conduct a delegates election in all registration areas in the constituency where the election is to be held and all registered members of the party in that registration area are eligible to vote for any contestant who presents himself to be a delegate of the party;

Provided that the delegates election shall be monitored by the Commission and the result of every delegates election shall be endorsed or certified by the Commission.

(8) A political party leader or official who is not elected in his or her registration area as a delegate of his or her party under subsection (7) shall not be a voting delegate of the party and shall not vote in his party's indirect primaries but may perform his functions in a neutral as may be prescribed in his party's constitution in relation to indirect primaries;

Provided that in performing his functions as a party leader or official in relation to indirect primaries, the party leader or official shall not conduct himself in any manner whatsoever to impact the election in favour of any aspirant in the indirect primaries.

(9) A party leader or official who contravenes the provisions of subsection (8) of this section commits an offence and is liable on conviction to imprisonment for a term of one year or a fine of N1,000,000.

(10) All National, State, Local Government Area or Area Council and Ward executives of a party and elected officials of government mentioned in this section who are members of the party are automatic or super delegates who are eligible to vote in their party's indirect primaries -

- (a) President and former Presidents;
- (b) Vice President and former Vice Presidents;
- (c) Governors and former Governors;

- (d) Deputy Governors and former Deputy Governors;
- (e) Senators and former Senators;
- (f) Members of the House of Representatives and former Members of the House of Representatives;
- (g) Members of State Houses of Assembly;
- (h) Chairmen of Local Government Areas or Area Councils; and
- (i) Councilors of Wards, provided that -
- (i) the number of automatic or super delegates shall not exceed 10% of the total number of elected delegates, and
- (ii) the party shall have the power to determine in its constitution or nomination guidelines and manuals, the particular indirect primaries or election to particular elective offices that automatic or super delegates shall vote.
- (11) A political party that adopts the system of indirect primaries for the choice of its candidate may outline further guidelines, rules and procedures to guarantee free, fair, and credible election of delegates to vote at a convention or congress of the party, but such further guidelines, rules and procedures shall not be inconsistent with the provisions of this Act.
- (12) Where a primary election is conducted, and duly attended and certified by the Commission in compliance with this Act, and the result is subsequently altered by a political party, the Commission shall have the power to overrule the alteration made by the political party and uphold such primaries.
- (13) The Primaries of political parties shall follow the following sequence -
- (a) National Assembly;
- (b) State Houses of Assembly;
- (c) Governorship; and
- (d) Presidential.
- (14) The dates for the primaries shall not be earlier than

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120 days and not later than 90 days before the date of elections to the offices.

- (15) Any official of the Commission who issues, endorses or certifies a false report or result in respect of a delegates election or primaries of a political party commits an offence and is liable on conviction to imprisonment for a term of one year or a fine of N1,000,000, or both.
- (16) A political party that adopts the system of indirect primaries for the nomination of its candidates for election shall ensure that all aspirants are given equal opportunity of being voted for by delegates of the party who shall be registered members of the party.
- (17) Where a political party adopts the system of indirect primaries for the nomination of its candidates for elections, the party shall adopt the following procedure
- (a) in the case of nominations to the position of presidential candidate, a political party shall, where it intends to sponsor a candidate -
 - (i) hold a special presidential convention at a designated centre in the Federal Capital Territory or any other place within the Federation and on a date agreed by the National Executive Committee of the party where delegates of the party shall vote for each of the presidential aspirants of the party, and
 - (ii) the presidential aspirant with the highest number of votes at the end of voting shall be declared the winner of the Presidential primaries of the political party and the aspirant's name shall be forwarded to the Commission as the presidential candidate of the party;
 - (b) in the case of nomination to the position of governorship candidate, a political party shall, where it intends to sponsor candidates -
 - (i) hold a special congress at a designated centre in the State Capital or any other place within the State and on a date agreed by the party where delegates of the party shall vote for each of the governorship aspirant of the party, and
 - (ii) the governorship aspirant with the highest number of votes at the end of voting shall be declared the winner of the governorship primaries of the party and the party shall forward the aspirant's name to the Commission as the candidate of the party, for the particular State;

(c) in the case of nomination to the position of a candidate to the Senate, House of Representatives and State House of Assembly, a political party shall, where it intends to sponsor candidates -

(i) hold special congresses in the Senatorial District, Federal Constituency and the State Assembly Constituency respectively in designated centres and on a date or dates agreed by the party where delegates of the party shall vote for each of the Senatorial, House of Representatives and House of Assembly Aspirants of the party, and

(ii) the Senatorial, House of Representatives and House of Assembly Aspirants with the highest number of votes at the end of voting shall be declared the winner of the primaries of the party for Senatorial District, Federal Constituency and the State Assembly Constituency respectively and the aspirants' names shall be forwarded to the Commission as the Senatorial, House of Representatives and House of Assembly candidates of the party, as the case may be; and

(d) in the case of the position of a chairmanship candidate of an Area Council, a political party shall, where it intends to sponsor candidates -

(i) hold special congresses in the Area Councils, with delegates voting for each of the aspirants at designated centres on a specified date, and

(ii) the aspirant with the highest number of votes at the end of voting shall be declared the winner of the primaries of the party and the aspirant's name shall be forwarded to the Commission as the candidate of the party.

(18) In the case of a councillorship candidate, the procedure for the nomination of the candidate shall be by direct primaries in the ward and the name of the candidate with the highest number of votes shall be submitted to the Commission as the candidate of the party.

(19) Where there is only one aspirant for an elective position in a party that has adopted the direct system of primaries, such an aspirant is deemed to be unchallenged and the party shall forward the name of the aspirant to the Commission as the candidate of the party.

(20) Where there is only one aspirant for any of the elective positions mentioned in subsection (17) (a) - (d), the party shall convene a special convention or congress, as the case may be, at a designated centre in the

particular constituency on a specified date to confirm that aspirant as the candidate of the party and the party shall forward the name of the aspirant to the Commission as the candidate of the party.

(21) A political appointee at any level of government shall not be an automatic or super delegate at the convention or congress of any political party for the purpose of nomination of candidates for any election under the indirect primaries system, except where such a political appointee is also an officer of a political party or otherwise elected as a delegate under subsection (7).

(22) Where a political party conducts its primaries or delegates election with the Commission in attendance and the result of the primaries or delegates election is endorsed or certified by the Commission, this shall be *prima facie* proof of the result of the election or delegates election.

(23) Nothing in this section shall prevent a political party from organising staggered primaries.

(24) Notwithstanding the provisions of this Act or rules of a political party, an aspirant who complains that any of the provisions of this Act or rules of a political party has not been complied with in the nomination of a candidate of a political party for election, may apply to the Federal High Court or the High Court of a State or the FCT for redress.

(25) Nothing in this section shall empower the Courts to stop the holding of primaries or general election or the processes under this Act pending the determination of the suit.

13. Section 112 of the Principal Act is amended by inserting after subsection (3), a new subsection "(4)"- a Amendment of section 112.

"(4) If after the commencement of poll and before the announcement of the final result and declaration of a winner, a nominated candidate dies

- (a) the Commission shall, being satisfied of the fact of the death, suspend the election for a period not exceeding 14 days;
- (b) the political party whose candidate died may, if it intends to continue to participate in the election, conduct a fresh primary within 7 days of the death of its candidate and submit a new candidate to the Commission to replace the dead candidate; and
- (c) subject to paragraphs (a) and (b), the Commission shall continue with the election, announce the final result and declare a winner."

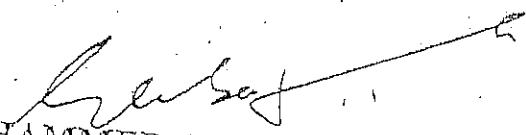
14. Section 151 of the Principal Act is amended by inserting, after subsection (2), a new subsection "(3)" - Amendment of section 151.

"(3) Where there is a breach of an order of a court or tribunal directed at the Commission particularly, order to produce, inspect or take copies of electoral materials, such disobedience shall attract court sanctions, which shall include the committal by the Tribunal or Court of the Commission's official to whom the order is directed to summary conviction to imprisonment for a term of at least two years, or fine of not less than N10,000,000."

15. This Act may be cited as the Electoral (Amendment) Act, 2018.

Citation.

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I, CERTIFY, IN ACCORDANCE WITH SECTION 2 (1) OF THE ACTS
AUTHENTICATION ACT CAP. A2, LAWS OF THE FEDERATION OF NIGERIA 2004,
THAT THIS IS A TRUE COPY OF THIS BILL PASSED BY BOTH HOUSES OF THE
NATIONAL ASSEMBLY.


MOHAMMED ATABA SANI-OMOLORI
CLERK TO THE NATIONAL ASSEMBLY

2nd DAY OF AUGUST, 2018