

INEC'S POWER TO REVIEW ELECTION RESULTS UNDER SECTION 65 OF THE ELECTORAL ACT 2026



This factsheet: explains how Section 65 of the Electoral Act 2026 changes the framework for reviewing election results, and highlights its implications for collation, ballot validity, and the role of INEC.

I. Overview

Section 65 of the Electoral Act has undergone a significant change between the 2022 Act and the 2026 Act. Under the 2022 framework, the provision addressed the **finality of a Returning Officer's decision** on ballot validity and result declaration, while also preserving a limited power for INEC to review declarations and returns within seven days. Under the 2026 Act, that structure has been replaced with a narrower provision focused only on **INEC's power to review a declaration or return** where it is satisfied that the declaration was made under duress or knowingly and wilfully contrary to the collation procedures in **section 62(4) – (8)**.

This shift is important because it removes the earlier express statutory finality of the Returning Officer's decision on result declarations. While this may have been intended to make room for INEC's review power, the provision does not clearly state what happens after a review. This leaves room for operational uncertainty and potentially uneven application.

Table: Comparison of Section 65 of the Electoral Act 2022 and the Electoral Act 2026

Issue	Electoral Act 2022	Electoral Act 2026	Key Change
Structure of provision	Two subsections dealing with: finality of Returning Officer's decision on ballots and declaration of scores of a candidate, INEC review, and tribunal/court review	Single streamlined provision on INEC review of declarations and returns	The provision is simplified, but also narrowed
Role of Returning Officer	Returning Officer's decision expressly stated to be final on unmarked ballot papers, rejected ballot papers, and declaration of candidates' scores	No equivalent finality clause	Express statutory finality is removed
Scope of issues covered	Unmarked ballot papers, rejected ballot papers, declaration of scores, and return of candidate	Limited to review of declaration and return	Ballot validity issues are no longer addressed here
Grounds for INEC review	Where declaration/return was not voluntary or contrary to law, regulations, guidelines, or manual	Where declaration/return was made under duress or knowingly and wilfully contrary to section 62(4)–(8) which deals with collation	Grounds are narrower and more specific
Source of trigger for review	Not expressly stated	Must arise from reports from INEC officials	Review is tied to internal reporting
Reference point for review	Broadly tied to law, regulations, guidelines, and manual	Specifically tied to collation procedures in Section 62(4)–(8)	Review is now focused on collation compliance
Judicial review clause	Expressly preserved tribunal/court review	No equivalent clause	Judicial review is no longer restated, though it is not extinguished

2. What the 2022 Provision Was Designed to Do

The 2022 version of Section 65 served three main purposes:

- **Administrative certainty:** It stated that the Returning Officer's decision was final on specific issues – **unmarked ballot papers, rejected ballot papers, and declaration of scores.** This helped ensure that collation would not be paralysed by endless disputes at the point of result announcement.

- **Institutional correction:** It allowed INEC to review a declaration or return within seven days where it was not voluntary or was contrary to the electoral law or guidelines.
 - **Judicial safeguard:** It preserved the right of election tribunals and courts to review such decisions by INEC.
- *In effect, it created a clear sequence: Returning Officer decision → INEC administrative review → Judicial review*

3. The Major Change in 2026 – INEC’s Review Power Refocused

The 2026 Act removes the previous three-layered structure and replaces it with a narrower rule focused only on INEC’s review power. Under the new Section 65, INEC may review a declaration or return only where it is satisfied that it was made:

- **under duress, or**
- **knowingly and wilfully contrary to collation procedures** in Section 62(4)–(8).

The provision no longer:

- addresses ballot validity issues;
- states that the Returning Officer’s decision is final; or
- expressly restates judicial review.

→ *The focus shifts from ballot-level disputes to the integrity of the collation process.*

What Happens after INEC Reviews a Result?

However, the new provision leaves some operational uncertainty. Section 65 does not fully specify what INEC should do after reviewing a declaration and finding that it was made under duress or in breach of the prescribed collation procedure. In practice, the provision may imply that INEC can: set aside a flawed declaration; direct or trigger re-collation; and issue a revised declaration or return. These steps are implied rather than expressly detailed and may create uncertainty unless clarified by INEC guidelines or judicial interpretation.

4. Reduced Procedural Clarity on Ballot Validity Issues

a. Ballot validity rules still exist

The removal of references in Section 65 to unmarked and rejected ballot papers does not mean that ballot validity issues have disappeared from the Electoral Act. Rather, it means that they are no longer addressed within Section 65.

An **unmarked ballot paper** is one not marked by the voter to indicate a choice, while a **rejected ballot** includes ballots invalid due to improper marking, over-marking, or marks that may identify the voter. These matters remain governed by substantive provisions of the Act. For instance, **section 52** of the Act requires that unmarked ballots be rejected, while **section 63(1)** provides that a ballot paper without the official mark prescribed by the Commission shall not be counted.

However, **section 63(2)** creates a limited exception, allowing such unmarked ballot to be counted where the Returning Officer is satisfied that it originated from an official booklet of ballot papers produced for the election. Judicial decisions following the 2023 election litigation cycle also indicated that where such unmarked ballots are counted, a petitioner challenging the decision must show that the Returning Officer’s discretion was wrongly exercised.

This is important in light of recent public concerns that the provision may allow politicians to print their own ballot papers and use them to rig elections. This concern should be treated carefully. It is however, important to note that the exception in **section 63(2)** is not new to the 2026 Act; it has existed in Nigeria’s electoral law since 2010.

Section 64 further provides the procedure for recording rejected ballots and allows the Returning Officer to overrule the Presiding Officer where appropriate. Together, these provisions – carried over from previous Electoral Acts – continue to regulate **what should or should not be counted**.

b. The gap is who has the final administrative say

The key change is that, under the 2022 Act, section 65 expressly identified the Returning Officer as the final administrative decision-maker on such ballot issues at collation. That clarity is no longer restated in the 2026 Act. Section 65 now deals with a narrower question: INEC’s power to review declarations or returns made under duress or knowingly and wilfully contrary to collation procedures.

A possible interpretation is that the removal of the Returning Officer’s finality on the declaration of scores was intended to make room for INEC’s refocused power to review declarations and returns. On this reading, the Returning Officer’s declaration is no longer final in the immediate administrative sense because INEC may review it within the seven-day statutory window. However, the Act does not fully close the loop. It does not clearly state what happens where INEC does not conduct a review, or whether the declaration becomes administratively final once the review window closes.

This is a significant ambiguity because electoral law has traditionally treated declared results as final unless set aside by a tribunal or court. Since INEC’s review power may not always be exercised in practice, the absence of a clear finality rule could create uncertainty for candidates, parties, election administrators, and other stakeholders.

→ *Section 63(2) addresses whether certain ballot papers may count, but section 65 no longer settles who has the final administrative say on such ballot disputes at collation. INEC, however, has seven days to review a declaration or return where it was made under duress or contrary to the prescribed collation procedure.*

5. Power to Review: Interaction with Transmission and Collation

By referencing **section 62(4)**, which requires collation officers to verify results using data transmitted from polling units, **section 65** appears to reinforce the role of transmitted data in the collation process.

However, compliance with collation procedures may not depend strictly on electronic transmission alone. **Section 60(3)** provides for electronic transmission of results but retains Form EC8A as the primary record for collation where transmission fails. In addition, the Act defines “transmit” broadly to include both manual and electronic methods.

This means that, although transmitted data is important, collation can still rely on manually transmitted results. As a result, failure to electronically transmit results may not, on its own, amount to non-compliance with collation procedures or trigger a review of a declaration under section 65.

At the same time, because collation must be checked against polling unit data, section 65 could still make electronically transmitted results more important in verifying results. This offers an **important opening** for INEC, civil society, political parties, and other election stakeholders to push for stronger use of technology, clearer verification standards, and more transparent collation practices in future elections.

→ *The extent to which Section 65 strengthens the legal weight of electronic transmission is likely to become a key issue in future election litigation.*

6. Key Analytical Takeaways

Section 65 has been fundamentally reframed as follows:

- a. **Removal of Express Finality:** The 2026 Act removes the clause that made the Returning Officer's decision final on specified ballot and result-related issues. A declaration or return may still stand unless reviewed or overturned, but its administrative finality is no longer expressly stated.
- b. **Shift to Collation Integrity:** Section 65 shifts focus from ballot disputes to whether collation procedures were properly followed. Earlier clarity on how ballot validity issues (e.g. unmarked and rejected ballots) are resolved at collation has been reduced. While section 63(2) and judicial decisions partly preserve the treatment of such ballots, they do not fully replace the broader procedural role previously played by the former Section 65.
- c. **Narrower Grounds for INEC Review:** The 2022 Act allowed review for broader non-compliance (including guidelines and manuals). The 2026 Act limits this to: duress; and knowing and wilful breach of collation procedures. The review power is now more specific, but also narrower.
- d. **Review tied to Internal Reporting:** INEC's review must be based on reports from its officials. This links the review process to internal institutional reporting and may limit the ability of external actors to directly trigger review.
- e. **Electronic Transmission Failure Alone May Not Trigger Review:** Section 65 gives transmitted polling unit data a stronger role in verifying results during collation. However, because Section 60(3) retains Form EC8A as the primary record where transmission fails, failure to electronically transmit results may not, on its own, be enough to trigger a review.
- f. **Operational Uncertainty After Review:** Section 65 allows INEC to review a declaration or return, but does not fully spell out the steps that should follow a successful review. INEC may have to rely on guidelines, administrative practice, and judicial interpretation to determine

whether and how to set aside a declaration, order re-collation, or issue a revised return.

g. Greater Importance of Regulations Guidelines and Courts: Because the new provision leaves several issues unresolved, INEC regulatives, guidelines and future judicial decisions will be important in clarifying how Section 65 should operate in practice.

7. Conclusion

Section 65 of the Electoral Act 2026 replaces the earlier framework of Returning Officer finality with a narrower INEC review power focused on declarations or returns made under duress or knowingly and wilfully contrary to collation procedures. This shift strengthens attention to the integrity of collation, but it also removes earlier procedural clarity on ballot-level disputes and the final administrative status of Returning Officer decisions. Its practical effect will depend on how INEC applies the provision, how political actors contest it, and how the courts interpret its scope.

For a provision intended to improve the integrity of election results, Section 65 may become one of the most important — and most contested — provisions in the 2026 Act.



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