

CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA NO. 200 OF 1993

[ASSENTED TO 25 JANUARY, 1994]

[DATE OF COMMENCEMENT: 27 APRIL, 1994]

(except ss. 248 and 249 on 28 January, 1994 and ss. 6, 40, 42, 127, 132, 143 (1) and Schedule 2 on 9 March, 1994)

(Afrikaans text signed by the State President)

as amended by

Constitution of the Republic of South Africa Amendment Act, No. 2 of 1994

Constitution of the Republic of South Africa Second Amendment Act, No. 3 of 1994

Constitution of the Republic of South Africa Third Amendment Act, No. 13 of 1994

Constitution of the Republic of South Africa Fourth Amendment Act, No. 14 of 1994

Constitution of the Republic of South Africa Sixth Amendment Act, No. 24 of 1994

Constitution of the Republic of South Africa Fifth Amendment Act, No. 29 of 1994

Constitution of the Republic of South Africa Amendment Act, No. 20 of 1995

Constitution of the Republic of South Africa Second Amendment Act, No. 44 of 1995

Constitution of the Republic of South Africa Amendment Act, No. 7 of 1996

Constitution of the Republic of South Africa Third Amendment Act, No. 26 of 1996

Constitution of the Republic of South Africa, No. 108 of 1996

Financial and Fiscal Commission 1993 Constitutional Provisions Repeal Act, No. 96 of 1997

Repeal of Volkstaat Council Provisions Act, No. 30 of 2001

Termination of Integration Intake Act, No. 44 of 2001

[with effect from 14 December, 2001]

Constitution of the Republic of South Africa Amendment Act, No. 2 of 2003

SUBSCRIBER'S NOTE

The previous Constitution: *Constitution of the Republic of South Africa, No. 200 of 1993*, has been repealed by the new Constitution: *Constitution of the Republic of South Africa, No. 108 of 1996*. However certain sections remain in force as outlined in Schedule 6 to the new Constitution.

The sections of the previous Constitution (as amended by the new Constitution) which remain in force, are reproduced below so that subscribers can remove Act No. 200 of 1993 from their binders and either retain or destroy as required.

Annotations indicate the length of time the sections of the previous Constitution remain in force and the parts of Schedule 6 of the new Constitution that amended them.

GENERAL NOTE

In terms of Proclamation No. 26 of 26 April, 2001, the administration of this Act has been

assigned to the Minister for Justice and Constitutional Development.

ACT

To introduce a new Constitution for the Republic of South Africa and to provide for matters incidental thereto.

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POWERS AND FUNCTIONS OF PRESIDENT

***82. Powers and functions of President.—**

- (4) (b) The President may—
- (i) with the approval of Parliament, declare a state of national defence;
 - (ii) employ the South African National Defence Force in accordance with and subject to sections 227 and 228; and
 - (iii) confer upon members of the South African National Defence Force permanent commissions and cancel such commissions.

ATTORNEYS-GENERAL

***108. Attorneys-General.—**(1) The authority to institute criminal prosecutions on behalf of the state shall vest in the attorneys-general of the Republic.

- (2) The area of jurisdiction, powers and functions of an attorney-general shall be as prescribed

by or under law.

(3) No person shall be appointed as an attorney-general unless he or she is appropriately qualified in terms of a law regulating the appointment of attorneys-general in the Republic.

VOLKSTAAT COUNCIL

***184A.**

[S.184A inserted by s. 9 of Act No. 2 of 1994 and repealed by s. 1 of Act No. 30 of 2001.]

Wording of Sections

***184B.**

[S. 184 (1) (a), (b) and (d) repealed by s. 1 of Act No. 30 of 2001.]

Wording of Sections

FINANCIAL AND FISCAL COMMISSION

199. Objects and functions.—(1)

[Sub-s. (1) repealed by s. 1 of Act No. 96 of 1997.]

Wording of Sections

200. Constitution, expertise and impartiality.—(1)

[Sub-s. (1) repealed by s. 1 of Act No. 96 of 1997.]

Wording of Sections

(3)

[Sub-s. (3) repealed by s. 1 of Act No. 96 of 1997.]

Wording of Sections

(5) to (11) inclusive

[Sub-ss. (5) to (11) inclusive repealed by s. 1 of Act No. 96 of 1997.]

201 to 206 inclusive.

[S. 201 to 206 inclusive repealed by s. 1 of Act No. 96 of 1997.]

Wording of Sections

POLICE AND DEFENCE

SOUTH AFRICAN POLICE SERVICE

***215. Powers and functions.—**The powers and functions of the Service shall be—

- (a) the prevention of crime;
- (b) the investigation of any offence or alleged offence;
- (c) the maintenance of law and order; and
- (d) the preservation of the internal security of the Republic.

***218. Responsibilities of National Commissioner.—**(1) Subject to the directions of the Minister of Safety and Security, the National Commissioner shall be responsible for—

- (a) the maintenance of an impartial, accountable, transparent and efficient police service;

- (b) the appointment of provincial commissioners;

[Para. (b) substituted by s. 241 of Act No. 108 of 1996. See Sch 6 Annex D item 1 (b).]

Wording of Sections

- (c) the preservation of the internal security in the Republic;

- (d) the investigation and prevention of organised crime or crime which requires national investigation and prevention or specialised skills;

[Para. (d) substituted by s. 241 of Act No. 108 of 1996. See Sch 6 Annex D item 1 (c).]

Wording of Sections

- (e) international police liaison;

- (f) the keeping and provision of crime intelligence data, criminal records and statistics;

- (g) the training of members of the Service, including any municipal or metropolitan police services to be established;

- (h) the recruitment, appointment, promotion and transfer of all members of the Service;

- (i) the provision of forensic laboratory services;

- (j) such functions relating to border control and the import and export of goods as may be assigned to the Service by law;

- (k) the establishment and maintenance of a national public order policing unit to be deployed in support of and at the request of the Provincial Commissioner;

[Para. (k) substituted by s. 241 of Act No. 108 of 1996. See Sch 6 Annex D item 1 (d).]

Wording of Sections

- (l) national protection services;

- (m) the establishment of a special task force for high risk operations which require specialised skills; and

- (n) subject to section 219, such other functions as—

- (i) are necessary to achieve the objectives referred to in section 215; and

[Sub-para. (i) substituted by s. 6 of Act No. 29 of 1994.]

Wording of Sections

- (ii) are appropriate for the National Commissioner to take responsibility for.

[Sub-s. (1) amended by s. 241 of Act No. 108 of 1996. See Sch 6 Annex D item 1.]

Wording of Sections

***219. Provincial Commissioners.**—(1) Subject to section 218 (1), a Provincial Commissioner shall be responsible for—

- (a) the investigation and prevention of crime;

- (b) the development of community-policing services;

- (c) the maintenance of public order;

- (d) the provision in general of all other visible policing services, including—

- (i) the establishment and maintenance of police stations;

- (ii) crime reaction units; and

- (iii) patrolling services;

- (e) protection services in regard to provincial institutions and personnel;
- (f) transfers within the province of members of the Service performing functions in terms of this section; and
- (g) the promotion, up to the rank of lieutenant-colonel, of members of the Service performing functions in terms of this section.

[Sub-s. (1) amended by s. 241 of Act No. 108 of 1996. See Sch 6 Annex D item 2.]

Wording of Sections

SOUTH AFRICAN NATIONAL DEFENCE FORCE

***224. Establishment of South African National Defence Force.**—(1) The South African National Defence Force is hereby established as the only defence force for the Republic.

(2) The South African National Defence Force shall at its establishment consist of all members of—

- (a) the South African Defence Force;
- (b) any defence force of any area forming part of the national territory; and
- (c) any armed force as defined in section 1 of the Transitional Executive Council Act, 1993 (Act No. 151 of 1993),

and whose names, at the commencement of this Constitution, are included in a certified personnel register referred to in section 16 (3) or (9) of the said Act: Provided that this subsection shall also apply to members of any armed force which submitted its personnel list after the commencement of the Constitution of the Republic of South Africa, 1993 (Act 200 of 1993), but before the adoption of the new constitutional text as envisaged in section 73 of that Constitution, if the political organisation under whose authority and control it stands or with which it is associated and whose objectives it promotes did participate in the Transitional Executive Council or did take part in the first election of the National Assembly and the provincial legislatures under the said Constitution.

[Sub-s. (2) amended by s. 241 of Act No. 108 of 1996. See Sch 6 Annex D item 3.]

Wording of Sections

(3) Save for the South African National Defence Force, no other armed force or military force or armed organisation or service may be established in or for the Republic other than—

- (a) as provided for in this Constitution;
- (b) a force established by or under an Act of Parliament for the protection of public property or the environment; or
- (c) a service established by or under law for the protection of persons or property.

***225. Chief of South African National Defence Force and Secretary for Defence.**—(1) Subject to section 236 (1) and (2), the President shall appoint a Chief of the South African National Defence Force, who shall exercise military executive command of the South African National Defence Force, subject to the directions of the Minister responsible for defence and, during a state of national defence, of the President.

(2) The Minister responsible for defence may appoint a Secretary for Defence who shall exercise such powers and perform such duties as may be provided for in any law.

[S. 225 substituted by s. 10 of Act No. 44 of 1995.]

Wording of Sections

***226. Members of South African National Defence Force.**—(1) The South African National Defence Force shall comprise both a permanent force and a part-time reserve component.

(2) The establishment, organisation, training, conditions of service and other matters concerning the permanent force shall be as provided for by an Act of Parliament.

(3) The establishment, organisation, training, state of preparedness, calling up, obligations and conditions of service of the part-time reserve component shall be as provided for by an Act of Parliament.

(4) The South African National Defence Force shall be established in such a manner that it will provide a balanced, modern and technologically advanced military force, capable of executing its functions in terms of this Constitution.

(5) All members of the South African National Defence Force shall be properly trained in order to comply with international standards of competency.

(6) No member of the permanent force shall hold office in any political party or political organisation.

(7) A member of the South African National Defence Force shall be obliged to comply with all lawful orders, but shall be entitled to refuse to execute any order if the execution of such order would constitute an offence or would breach international law on armed conflict binding on the Republic.

(8) Provision shall be made by an Act of Parliament for the payment of adequate compensation to—

- (a) a member of the South African National Defence Force who suffers loss due to physical or mental disability sustained in the execution of his or her duties as such a member; and
- (b) the immediate dependants of a member of the South African National Defence Force who suffer loss due to the death or physical or mental disability of such a member resulting from the execution of his or her duties as such a member.

***227. Functions of South African National Defence Force.**—(1) The South African National Defence Force may, subject to this Constitution, be employed—

- (a) for service in the defence of the Republic, for the protection of its sovereignty and territorial integrity;
- (b) for service in compliance with the international obligations of the Republic with regard to international bodies and other states;
- (c) for service in the preservation of life, health or property;
- (d) for service in the provision or maintenance of essential services;
- (e) for service in the upholding of law and order in the Republic in co-operation with the South African Police Service under circumstances set out in a law where the said Police Service is unable to maintain law and order on its own; and
- (f) for service in support of any department of state for the purpose of socio-economic upliftment.

(2) The National Defence Force shall exercise its powers and perform its functions solely in the national interest in terms of Chapter 11 of the Constitution of the Republic of South Africa, 1996.

[Sub-s. (2) substituted by s. 241 of Act No. 108 of 1996. See Sch 6 Annex D item 4.]

Wording of Sections

(3) The employment for service, training, organisation and deployment of the South African National Defence Force shall be effected in accordance with the requirements of subsection (2).

***228. Accountability.**—(1) The Minister responsible for defence shall be accountable to Parliament for the South African National Defence Force.

(2) Parliament shall annually approve a budget for the defence of the Republic.

(3) (a) A joint standing committee of Parliament on defence shall be established, consisting of members of all political parties holding more than 10 seats in the National Assembly and willing to participate in the committee.

(b) The total membership of the committee shall be as determined by or under the rules and orders.

(c) Such a party shall be entitled to designate a member or members on the committee in accordance with the principle of proportional representation and as determined in accordance with the following formula:

(i) A quota of seats per member of the committee shall be determined by dividing the total number of seats in the National Assembly held jointly by all the parties referred to in paragraph (a) by the total number of members of the committee plus one.

(ii) The result, disregarding third and subsequent decimals, if any, shall be the quota of seats per member.

(iii) The number of members that a participating party shall be entitled to designate on the committee, shall be determined by dividing the total number of seats held by such party in the National Assembly by the quota referred to in subparagraph (ii).

(iv) The result shall, subject to subparagraph (v), indicate the number of members that such party is entitled to designate on the committee.

(v) Where the application of the above formula yields a surplus not absorbed by the number of members allocated to a party, such surplus shall compete with other similar surpluses accruing to another party or parties, and any member or members which remain unallocated shall be allocated to the party or parties concerned in sequence of the highest surplus.

(d) The committee shall be competent to investigate and make recommendations regarding the budget, functioning, organisation, armaments, policy, morale and state of preparedness of the South African National Defence Force and to perform such other functions relating to parliamentary supervision of the Force as may be prescribed by law.

(4) (a) The President shall, when the South African National Defence Force is employed for service referred to in section 227 (1) (a), (b) or (e), forthwith inform Parliament of the reasons for such employment.

(b) If, in the case of such an employment referred to in section 227 (1) (a) or (b), Parliament is not sitting, the President shall summon the joint standing committee referred to in subsection (3) to meet expeditiously, but not later than 14 days after the commencement of such employment, and shall inform the committee of the reasons for such employment.

(5) Parliament may by resolution terminate any employment referred to in section 227 (1) (a), (b) or (e), but such termination of employment shall not affect the validity of anything done in terms of such employment up to the date of such termination, or any right, privilege, obligation or liability acquired, accrued or incurred as at the said date under and by virtue of such employment.

TRANSITIONAL PROVISIONS

***236. Transitional arrangements: Public administration.**—(1) A public service, department of state, administration, or security service which immediately before the commencement of the Constitution of the Republic of South Africa, 1996 (hereinafter referred to as “the new constitution”), performed governmental functions, continues to function in terms of the legislation applicable to it until it is abolished or incorporated or integrated into any appropriate institution or is rationalised or consolidated with any other institution.

[Sub-s. (1) substituted by s. 241 of Act No. 108 of 1996. See Sch 6 Annex D item 5 (a).]

Wording of Sections

(2) A person who immediately before the commencement of the new Constitution was employed by an institution referred to in subsection (1) shall continue in such employment subject to and in accordance with the new Constitution and other applicable laws regulating such employment.

(3) Subject to subsections (1) and (2), all powers, directions, orders, instructions or delegations which were in force in respect of an institution which immediately before the commencement of the new Constitution performed governmental functions as contemplated in subsection (1) shall, after the said commencement, continue in force for the purpose of the continued functioning within the contemplation of subsection (1) of any such institution, until cancelled or otherwise no longer in force in law.

(6) (a) The President may appoint a commission to review the conclusion or amendment of a contract, the appointment or promotion, or the award of a term or condition of service or other benefit, which occurred between 27 April 1993 and 30 September 1994 in respect of any person referred to in subsection (2) or any class of such persons.

(b) The commission may reverse or alter the contract, appointment, promotion or award if not proper or justifiable in the circumstances of the case.

[Sub-s. (6) amended by s. 1 of Act No. 20 of 1995 and substituted by s. 2 of Act No. 7 of 1996 and by s. 241 of Act No. 108 of 1996. See Sch 6 Annex D item 5 (b).]

Wording of Sections

(7) (b) Any reference in any law to the South African Police or any other police force (excluding a municipal police service) shall, unless the context indicates otherwise, be construed as a reference to the said South African Police Service.

(8) (a) The South African National Defence Force referred to in section 224 shall, subject to the new Constitution and any Act of Parliament, *mutatis mutandis* be governed by the Defence Act, 1957 (Act No. 44 of 1957).

(b) Any reference in any law to a defence force referred to in section 224 (2) (a) or (b), shall be deemed to be a reference to the South African National Defence Force.

(c) If the number of the members of the South African National Defence Force exceeds the personnel strength determined in respect of the force design and structure for the Force, any member of the Force who, due to integration, consolidation and rationalisation of the South African National Defence Force is not accommodated in such force design and structure, shall be dealt with in accordance with a law.

[S. 236 amended by a.241 of Act No. 108 of 1996. See Schedule 6 Annexure D item 5 (c).]

Wording of Sections

(d) The continuance of membership of members of the South African National Defence Force referred to in section 224 (2) (c) shall be subject to such members entering into an agreement for temporary or permanent appointment with the South African National Defence Force on or before

31 March 2002: Provided that such agreements shall be in accordance with normal employment policies and terms and conditions of service.

[S. 236 amended by s. 241 of Act 108 of 1996. See Sch 6 Annex D item 5 (c). Para. (d) substituted by s. 5 of Act No. 44 of 2001.]

Wording of Sections

***237. Rationalisation of public administration.**—(1) (a) The rationalisation of all institutions referred to in section 236 (1), excluding military forces referred to in section 224 (2), shall after the commencement of the Constitution of the Republic of South Africa, 1996, continue, with a view to establishing—

- (i) an effective administration in the national sphere of government to deal with matters within the jurisdiction of the national sphere; and
- (ii) an effective administration for each province to deal with matters within the jurisdiction of each provincial government

[Para. (a) substituted by s. 241 of Act No. 108 of 1996. See Sch 6 Annex D item 6 (a).]

Wording of Sections

(b) All military forces referred to in section 224 (2) shall be rationalised for the purposes of the South African National Defence Force.

(2) (a) The responsibility for the rationalisation of—

- (i) institutions referred to in section 236 (1), excluding military forces, shall rest with the national government, which shall exercise such responsibility in co-operation with the provincial governments;

[Sub-para. (i) substituted by s. 241 of Act No. 108 of 1996. See Sch 6 Annex D item 6 (b).]

Wording of Sections

- (ii) military forces shall rest with the national government.

***239. Transitional arrangements: Assets and liabilities.**—

(4) Subject to and in accordance with any applicable law, the assets, rights, duties and liabilities of all forces referred to in section 224 (2) shall devolve upon the National Defence Force in accordance with the directions of the Minister of Defence.

[Sub-s. (4) substituted by s. 241 of Act No. 108 of 1996. See Sch 6 Annex D item 7.]

Wording of Sections

(5) Anything done in terms of this section shall be subject to audit by the Auditor General.

***245. Transitional arrangements: Local government.**—

(4) Until a period of not less than three years has elapsed from the date on which the members of a district council, a metropolitan substructure, a transitional council, a transitional representative council or a transitional rural council as contemplated in the Local Government Transition Act, 1993, have been elected in terms of that Act, such council or substructure, as the case may be, shall not be disestablished and no change shall be made to the powers, area of jurisdiction, wards or number of seats thereof except in accordance with an Act of Parliament further regulating the local government transition process or by way of proclamation in the *Provincial Gazette* by the Premier of a province acting in consultation with the Minister for Provincial Affairs and Constitutional Development.

[S. 245 amended by s. 9 of Act No. 29 of 1994 and substituted by s. 12 of Act No. 44 of 1995.

Sub-s. (4) added by s. 3 (b) of Act No. 7 of 1996.]

Wording of Sections

Schedule 2 [See Sch 6 item 11 (1).]

SYSTEM FOR ELECTION OF NATIONAL ASSEMBLY AND PROVINCIAL LEGISLATURES

[Schedule 2 amended by s. 12 of Act No. 2 of 1994, by s. 241 of Act No. 108 of 1996 and by s. 7 of Act No. 2 of 2003. See Sch. 6 Annex. A.]

Wording of Sections

Election of National Assembly

1. Parties registered in terms of national legislation and contesting an election of the National Assembly, shall nominate candidates for such election on lists of candidates prepared in accordance with this Schedule and national legislation.
2. The seats in the National Assembly as determined in terms of section 46 of the new Constitution, shall be as follows:
 - (a) One half of the seats from regional lists submitted by the respective parties, with a fixed number of seats reserved for each region as determined by the Commission for the next election of the Assembly, taking into account available scientifically based data in respect of voters, and representations by interested parties.
 - (b) The other half of the seats from national lists submitted by the respective parties, or from regional lists where national lists were not submitted.
3. The lists of candidates submitted by a party, shall in total contain the names of not more than a number of candidates equal to the number of seats in the National Assembly, and each such list shall denote such names in such fixed order of preference as the party may determine.
4. A party's lists of candidates shall consist of—
 - (a) both a national list and a list for each region; or
 - (b) a list for each region,with such number of names on each list as the party may determine subject to item 3.
5. The seats referred to in item 2 (a) shall be allocated per region to the parties contesting an election, as follows:
 - (a) A quota of votes per seat shall be determined in respect of each region by dividing the total number of votes cast in a region by the number of seats, plus one, reserved for such region under item 2 (a).
 - (b) The result plus one, disregarding fractions, shall be the quota of votes per seat in respect of a particular region.
 - (c) The number of seats to be awarded for the purposes of paragraph (e) in respect of such region to a party, shall, subject to paragraph (d), be determined by dividing the total number of votes cast in favour of such party in a region by the quota of votes per seat indicated by paragraph (b) for that region.
 - (d) Where the result of the calculation referred to in paragraph (c) yields a surplus not absorbed by the number of seats awarded to a party concerned, such surplus shall compete with other similar surpluses accruing to any other party or parties in respect of the relevant region, and any seat or seats in respect of that region not awarded in terms of paragraph (c), shall be awarded to the party or parties concerned in sequence of the highest surplus.
 - (e) The aggregate of a party's awards in terms of paragraphs (c) and (d) in respect of a particular region shall indicate that party's provisional allocation of the seats reserved under item 2 (a) for that region.

- (f) The aggregate of a party's provisional allocations for the various regions in terms of paragraph (e), shall indicate its provisional allocation of the seats referred to in item 2 (a).
 - (g) If no recalculation of provisional allocations is required in terms of item 7 in respect of the seats referred to in item 2 (a), the provisional allocation of such seats in terms of paragraphs (e) and (f) shall become the final allocation of such seats to the various parties, and if such a recalculation is required the provisional allocation of such seats, as adjusted in terms of item 7, shall become the final allocation of such seats to the various parties.
6. The seats referred to in item 2 (b) shall be allocated to the parties contesting an election, as follows:
- (a) A quota of votes per seat shall be determined by dividing the total number of votes cast nationally by the number of seats in the National Assembly, plus one, and the result plus one, disregarding fractions, shall be the quota of votes per seat.
 - (b) The number of seats to be awarded to a party for the purposes of paragraph (d) shall, subject to paragraph (c), be determined by dividing the total number of votes cast nationally in favour of such party by the quota of votes per seat determined in terms of paragraph (a).
 - (c) Where the result of the calculation in terms of paragraph (b) yields a surplus not absorbed by the number of seats awarded to a party concerned, such surplus shall compete with other similar surpluses accruing to any other party or parties, and any seat or seats not awarded in terms of paragraph (b), shall be awarded to the party or parties concerned in sequence of the highest surplus, up to a maximum of five seats so awarded: Provided that subsequent awards of seats still remaining unawarded shall be made in sequence to those parties having the highest average number of votes per seat already awarded in terms of paragraph (b) and this paragraph.
 - (d) The aggregate of a party's awards in terms of paragraphs (b) and (c) shall be reduced by the number of seats provisionally allocated to it in terms of item 5 (f) and the result shall indicate that party's provisional allocation of the seats referred to in item 2 (b).
 - (e) If no recalculation of provisional allocations is required in terms of item 7 in respect of the seats referred to in item 2 (b), the provisional allocation of such seats in terms of paragraph (d) shall become the final allocation of such seats to the various parties, and if such a recalculation is required, the provisional allocation of such seats, as adjusted in terms of item 7, shall become the final allocation of such seats to the various parties.
7. (1) If a party has submitted a national or a regional list containing fewer names than the number of its provisional allocation of seats which would have been filled from such list in terms of item 8 or 9 had such provisional allocation been the final allocation, it shall forfeit a number of seats equal to the deficit.
- (2) In the event of any forfeiture of seats in terms of subitem (1) affecting the provisional allocation of seats in respect of any particular region in terms of item 5 (e), such allocation shall be recalculated as follows:
- (a) The party forfeiting seats shall be disregarded in such recalculation, and its provisional allocation of seats in terms of item 5 (e) for the region in question, minus the number of seats forfeited by it in respect of its list for such region, shall become its final allocation in respect of the seats reserved for such region in terms of item 2 (a).
 - (b) An amended quota of votes per seat shall be determined in respect of such region by

dividing the total number of votes cast in the region, minus the number of votes cast in such region in favour of the party referred to in paragraph (a), by the number of seats, plus one, reserved for such region under item 2 (a), minus the number of seats finally allocated to the said party in terms of paragraph (a).

- (c) The result plus one, disregarding fractions, shall be the amended quota of votes per seat in respect of such region for purposes of the said recalculation.
 - (d) The number of seats to be awarded for the purposes of paragraph (f) in respect of such region to a party participating in the recalculation, shall, subject to paragraph (e), be determined by dividing the total number of votes cast in favour of such party in such region by the amended quota of votes per seat indicated by paragraph (c) for such region.
 - (e) Where the result of the recalculation in terms of paragraph (d) yields a surplus not absorbed by the number of seats awarded to a party concerned, such surplus shall compete with other similar surpluses accruing to any other party or parties participating in the recalculation in respect of the said region, and any seat or seats in respect of such region not awarded in terms of paragraph (d), shall be awarded to the party or parties concerned in sequence of the highest surplus.
 - (f) The aggregate of a party's awards in terms of paragraphs (d) and (e) in respect of such region shall, subject to subitem (4), indicate that party's final allocation of the seats reserved under item 2 (a) for that region.
- (3) In the event of any forfeiture of seats in terms of subitem (1) affecting the provisional allocation of seats in terms of item 6 (d), such allocation shall be recalculated as follows:
- (a) The party forfeiting seats shall be disregarded in such recalculation, and its provisional allocation of seats in terms of item 6 (d), minus the number of such seats forfeited by it, shall become its final allocation of the seats referred to in item 2 (b).
 - (b) An amended quota of votes per seat shall be determined by dividing the total number of votes cast nationally, minus the number of votes cast nationally in favour of the party referred to in paragraph (a), by the number of seats in the Assembly, plus one, minus the number of seats finally allocated to the said party in terms of paragraph (a).
 - (c) The result plus one, disregarding fractions, shall be the amended quota of votes per seat for the purposes of the said recalculation.
 - (d) The number of seats to be awarded for the purposes of paragraph (f) to a party participating in the recalculation shall, subject to paragraph (e), be determined by dividing the total number of votes cast nationally in favour of such party by the amended quota of votes per seat indicated by paragraph (c).
 - (e) Where the result of the recalculation in terms of paragraph (d) yields a surplus not absorbed by the number of seats awarded to a party concerned, such surplus shall compete with other similar surpluses accruing to any other party or parties participating in the recalculation, and any seat or seats not awarded in terms of paragraph (d), shall be awarded to the party or parties concerned in sequence of the highest surplus, up to a maximum of five seats so awarded: Provided that subsequent awards of seats still remaining unawarded shall be made in sequence to those parties having the highest average number of votes per seat already awarded in terms of paragraph (d) and this paragraph.
 - (f) The aggregate of such a party's awards in terms of paragraphs (d) and (e) shall be reduced by the number of seats finally allocated to it in terms of item 5 (g), and the result shall, subject to subitem (4), indicate that party's final allocation of the seats

referred to in item 2 (b).

- (4) In the event of a party being allocated an additional number of seats in terms of this item, and its list in question then does not contain the names of a sufficient number of candidates as set out in subitem (1), the procedure provided for in this item shall *mutatis mutandis* be repeated until all seats have been allocated.
8. (1) Where a party submitted both a national list and regional lists, the seats finally allocated to it—
 - (a) in terms of item 5 (g), shall be filled from its regional lists in accordance with its final allocation of seats in respect of the various regions; and
 - (b) in terms of item 6 (e), shall be filled from its national list in accordance with its final allocation of seats in terms of that item.
- (2) A seat finally allocated to a party in respect of a region, shall, for the purposes of subitem (1) (a), be filled only from such party's list for that particular region.
9. (1) Where a party submitted regional lists only, the seats finally allocated to it—
 - (a) in terms of item 5 (g), shall be filled from such lists in accordance with its final allocation of seats in respect of the various regions; and
 - (b) in terms of item 6 (e), shall be filled from the said lists in the same proportions as the proportions in which the seats referred to in paragraph (a) are to be filled in respect of the various regions for which the party was finally allocated seats in terms of item 5 (g): Provided that if a party was not allocated any seats in terms of item 5 (g), the seats allocated to it in terms of item 6 (e) shall be filled from its regional lists in proportion to the number of votes received by that party in each of the regions: Provided further that surplus fractions shall be disregarded save that any remaining seats shall be awarded to regions in sequence of the highest surplus fractions.
- (2) A seat finally allocated to a party in respect of a region, shall, for the purposes of subitem (1) (a), be filled only from such party's list for that particular region.

Election of provincial legislatures

10. The number of seats in each provincial legislature shall be as determined in terms of section 105 of the new Constitution.
11. Parties registered in terms of national legislation and contesting an election of a provincial legislature, shall nominate candidates for election to such provincial legislature on provincial lists prepared in accordance with this Schedule and national legislation.
12. Each party shall be entitled to submit only one list per province, which shall contain the names of not more than the number of seats determined under item 10 for the relevant provincial legislature and in such fixed order of preference as the party may determine.
13. The seats determined for a provincial legislature shall be allocated to parties contesting an election, as follows—
 - (a) A quota of votes per seat shall be determined by dividing the total number of votes cast in the province concerned by the number of seats, plus one, determined under item 10 for such province and the result plus one, disregarding fractions, shall be the quota of votes per seat for such province.
 - (b) The number of seats to be awarded to a party for the purposes of paragraph (d) shall, subject to paragraph (c), be determined by dividing the total number of votes cast in the province in favour of such party by the quota of votes per seat determined in terms of paragraph (a).

- (c) Where the result of the calculation in terms of paragraph (b) yields a surplus not absorbed by the number of seats awarded to a party concerned, such surplus shall compete with other similar surpluses accruing to any other party or parties in respect of the province concerned, and any seat or seats not awarded in terms of paragraph (b), shall be awarded to the party or parties concerned in sequence of the highest surplus.
 - (d) The aggregate of a party's awards in terms of paragraphs (b) and (c), shall indicate that party's provisional allocation of seats in the provincial legislature in question.
 - (e) If no recalculation of provisional allocations for a province concerned is required in terms of item 14, the provisional allocation of seats in respect of that province in terms of paragraph (d), shall become the final allocation of such seats to the various parties, and if such a recalculation is required the provisional allocation of such seats as adjusted in terms of item 14 shall become the final allocation of such seats to the various parties.
14. (1) If a party has submitted a provincial list containing fewer names than the number of seats provisionally allocated to it in terms of item 13 (d), it shall forfeit a number of seats equal to the deficit.
- (2) In the event of any forfeiture of seats in terms of subitem (1), the allocation of seats in respect of the province concerned shall be recalculated as follows:
- (a) The party forfeiting seats shall be disregarded in such recalculation, and its provisional allocation of seats in terms of item 13 (d), minus the number of seats forfeited by it in respect of its list for such province, shall become its final allocation of seats in the provincial legislature concerned.
 - (b) An amended quota of votes per seat shall be determined in respect of such province by dividing the total number of votes cast in the province, minus the number of votes cast in the province in favour of the party referred to in paragraph (a), by the number of seats, plus one, determined in terms of item 10 in respect of the province concerned, minus the number of seats finally allocated to the said party in terms of paragraph (a).
 - (c) The result plus one, disregarding fractions, shall be the amended quota of votes per seat in respect of such province for purposes of the said recalculation.
 - (d) The number of seats to be awarded for the purposes of paragraph (f) in respect of such province to a party participating in the recalculation, shall, subject to paragraph (e), be determined by dividing the total number of votes cast in favour of such party in such province by the amended quota of votes per seat indicated by paragraph (c) for such province.
 - (e) Where the result of the recalculation in terms of paragraph (d) yields a surplus not absorbed by the number of seats awarded to a party concerned, such surplus shall compete with other similar surpluses accruing to any other party or parties participating in the recalculation, and any seat or seats in respect of such province not awarded in terms of paragraph (d), shall be awarded to the party or parties concerned in sequence of the highest surplus.
 - (f) The aggregate of such a party's awards in terms of paragraphs (d) and (e) in respect of such province shall, subject to subitem (3), indicate that party's final allocation of the seats determined under item 10 in respect of that province.
- (3) In the event of a party being allocated an additional number of seats in terms of this item, and its list in question then does not contain the names of a sufficient number of candidates as set out in subitem (1), the process provided for in this item shall *mutatis mutandis* be repeated until all seats have been allocated.

Ballot papers

15. There shall be separate ballot papers for the election of members of the National Assembly and of members of the provincial legislatures.

Designation of representatives

16. (1) After the counting of votes has been concluded, the number of representatives of each party has been determined and the election result has been declared in terms of section 190 of the new Constitution, the Commission shall, within two days after such declaration, designate from each list of candidates, published in terms of national legislation, the representatives of each party in the legislature.
- (2) Following the designation in terms of subitem (1), if a candidate's name appears on more than one list for the National Assembly or on lists for both the National Assembly and a provincial legislature (if an election of the Assembly and a provincial legislature is held at the same time), and such candidate is due for designation as a representative in more than one case, the party which submitted such lists shall, within two days after the said declaration, indicate to the Commission from which list such candidate will be designated or in which legislature the candidate shall serve, as the case may be, in which event the candidate's name shall be deleted from the other lists.
- (3) The Commission shall forthwith publish the list of names of representatives in the legislature or legislatures.

Supplementation of lists of candidates

17. No lists of candidates of a party for any legislature shall be supplemented prior to the designation of representatives in terms of item 16, save where provided for by an Act of Parliament.
18. Lists of candidates may, after the designation of representatives in terms of item 16 has been concluded, be supplemented by the addition of an equal number of names at the end of the applicable list, if—
- (a) a representative is elected as the President or to any other executive office as a result of which he or she resigns as a representative of a legislature;
 - (b) a representative is appointed as a permanent delegate to the National Council of Provinces.
 - (c) a name is deleted from a list in terms of item 16 (2); or
 - (d) a vacancy has occurred and the appropriate list of candidates of the party concerned is depleted.
19. Lists of candidates of a party referred to in item 16 (1) may be supplemented on one occasion only at any time during the first 12 months following the date on which the designation of representatives in terms of item 16 has been concluded, in order to fill casual vacancies: Provided that any such supplementation shall be made at the end of the list.
20. The number of names on lists of candidates as supplemented in terms of item 18 shall not exceed the difference between the number of seats in the National Assembly or a provincial legislature, as the case may be, and the number of representatives of a party in any such legislature.

Review of lists of candidates by a party

21. A party may review its undepleted lists as supplemented in terms of items 18, 19 and 20, within seven days after the expiry of the period referred to in item 19, and annually thereafter, until the date on which a party has to submit lists of candidates for an ensuing election, in the following

manner:

- (a) all vacancies may be supplemented;
- (b) no more than 25 per cent of candidates may be replaced; and
- (c) the fixed order of lists may be changed.

Publication of supplemented and reviewed lists of candidates

22. Candidates' lists supplemented in terms of items 18 and 19 or reviewed in terms of item 21 shall be published by the Secretary to Parliament and the Secretaries of the provincial legislatures within 10 days after the receipt of such lists from the parties concerned.

Vacancies

23. (1) In the event of a vacancy in a legislature to which this Schedule applies, the party which the vacating member represented shall fill the vacancy by nominating a person—
- (a) whose name appears on the list of candidates—
 - (i) from which that party's members were originally nominated; or
 - (ii) where applicable, submitted by a party in terms of item 5 (2) of Schedule 6A to the new Constitution; and
 - (b) who is the next qualified and available person on the list.
- (2) A nomination to fill a vacancy shall be submitted to the Speaker in writing.
- (3) If a party represented in a legislature dissolves or ceases to exist and the members in question vacate their seats in consequence of section 47 (3) (c) or 106 (3) (c) of the new Constitution, the seats in question shall be allocated to the remaining parties *mutatis mutandis* as if such seats were forfeited seats in terms of item 7 or 14, as the case may be.

[Item 23 substituted by s. 7 (a) of Act No. 2 of 2003.]

Wording of Sections

Party may change name

- 23A. Despite sections 47 (3) (c) and 106 (3) (c) of the new Constitution any existing political party may at any time change its name.

[Item 23A substituted by s. 7 (b) of Act No. 2 of 2003.]

Wording of Sections

24.

Definitions

25. In this Schedule—

“Commission” means the Electoral Commission referred to in section 190 of the new Constitution;

“national list” means a list of candidates prepared by a party for an election of the National Assembly to reflect that party's order of preference of candidates in respect of the allocation of seats on a national basis;

“new Constitution” means the Constitution of the Republic of South Africa, 1996;

“provincial list” means a list of candidates prepared by a party for an election of a provincial legislature;

“region” means the territorial area of a province;

“regional list” means a list of candidates in respect of a region prepared by a party for an election of the National Assembly to reflect that party’s order of preference of candidates in respect of the allocation of seats in respect of such region;

“votes” means—

- (a) where it occurs in items 5, 6, 7 and 9, votes cast in the election for the National Assembly;
- (b) where it occurs in items 13 and 14, votes cast in the election for the provincial legislature of a province concerned; and
- (c) where it occurs in item 16, votes cast in the election for the National Assembly and the provincial legislatures.

26.

