

CHAPTER XIV ELECTION COMMISSION

Election Commission

103. (1) There shall be an Election Commission (in this Chapter referred to as the "Commission") consisting of five members appointed by the President on the recommendation of the Constitutional Council, from amongst persons who have distinguished themselves in any profession or in the fields of administration or education. The President shall on the recommendation of the Constitutional Council, appoint one member as its Chairman.

(2) The object of the Commission shall be to conduct free and fair elections and Referenda.

(3) No person shall be appointed as a member of the Commission or continue to hold office as such member if he is or becomes a member of Parliament, a Provincial Council or a local authority, or is or appointed a judicial officer or public officer, or is or enters into the employment of the State in any capacity whatsoever.

(4) The provisions of the Constitution and any other law relating to the removal of judges of the Supreme Court and the Court of Appeal from office shall, *mutatis mutandis*, apply to the removal of a member of the Commission from office.

(5) A member of the Commission who without obtaining prior leave of the Commission, absents himself from three consecutive meetings of the Commission, shall be deemed to have vacated office with effect from the date of the third of such meetings.

(6) A member of the Commission shall hold office for a period of five years from the date of appointment, unless he becomes subject to any disqualification under paragraph (3) of this Article or earlier resigns from office by writing addressed to the President or is removed from office under paragraph (4) of this Article, or is convicted by a court of law of any offence involving moral turpitude, or if a resolution for the imposition of civic disability upon him has been passed in terms of Article 81 or is deemed to have vacated office under paragraph (5) of this Article.

(7) The President may grant a member leave from the performance of his duties relating to the Commission for a period not exceeding two months and may appoint a person qualified to be a member of the Commission to be a temporary member for the period of such leave. Every such appointment shall be made on the recommendation of the Constitutional Council.

(8) A member of the Commission shall be paid such emoluments as may be determined by Parliament. The emoluments paid to a member of the Commission shall be charged on the Consolidated Fund and shall not be diminished during the term of office of the member.

(9) All members of the Commission shall be deemed to be public servants within the meaning and for the purposes of Chapter IX of the Penal Code.

Meetings of the Commission

104. (1) The quorum for any meeting of the Commission shall be three members.

(2) (a) The Chairman of the Commission shall preside at all meetings of the Commission and, in the absence of the Chairman from any meeting of the Commission, a member elected by the members present from amongst themselves shall preside at such meeting.

(b) Decisions of the Commission shall be by a majority of the members present and voting at the meeting at which the decision is taken, and in the event of an equality of votes, the Chairman or the member presiding at the meeting shall have a casting vote.

(3) The Commission shall have power to act notwithstanding any vacancy in the

membership of the commission, and no act or proceeding or decision of the Commission shall be invalid or be deemed to be invalid by reason only of such vacancy or any defect in the appointment of a member.

Finality of decisions and immunity from suit

104A. Subject to the jurisdiction conferred on the Supreme Court under paragraph (1) of Article 126, Article 104H and Article 130, and on the Court of Appeal by Article 144, and the jurisdiction conferred on any court by any law to hear and determine election petitions or Referendum petitions, -

- (a) no court shall have the power or jurisdiction to entertain or hear or decide or call in question on any ground and in any manner whatsoever, any decision, direction or act of the Commission, made or done or purported to have been made or done under the Constitution or under any law relating to the holding of an election or the conduct of a Referendum as the case may be, which decisions, directions or acts shall be final and conclusive; and
- (b) no suit or prosecution or other proceeding shall lie against any member or officer of the Commission for any act or thing which in good faith is done or purported to be done by him in the performance of his duties or the discharge of his functions under the Constitution or under any law relating to the holding of an election or the conduct of a Referendum as the case may be.

Powers functions and duties of the Commission

104B. (1) The Commission shall exercise, perform and discharge all such powers, duties and functions conferred or imposed on or assigned to -

- (a) the Commission; or
- (b) the Commissioner-General of Elections,

by the Constitution, and by the law for the time being relating to the election of the President, the election of Members of Parliament, the election of members of Provincial Councils, the election of members of local authorities and the conduct of Referenda, including but not limited to all the powers, duties and functions relating to the preparation and revision of registers of electors for the purposes of such elections and Referenda and the conduct of such elections and Referenda.

(2) It shall be the duty of the Commission to secure the enforcement of all laws relating to the holding of any such election or the conduct of Referenda, and it shall be the duty of all authorities of the State charged with the enforcement of such laws, to co-operate with the Commission to secure such enforcement.

(3) The Commission shall be responsible and answerable to Parliament in accordance with the provisions of the Standing Orders of Parliament for the exercise, performance and discharge of its powers, duties and functions, and shall forward to Parliament for each calendar year a report of its activities for such year.

(4) (a) The Commission shall have the power during the period of an election, to prohibit the use of any movable or immovable property belonging to the State or any public corporation -

- (i) for the purpose of promoting or preventing the election of any candidate or any political party or independent group contesting at such election ;
- (ii) by any candidate or any political party or any independent group contesting at such election.

by a direction in writing by the Chairman of the Commission or of the Commissioner-General of Elections on the instruction of the Commission.

(b) It shall be the duty of every person or officer in whose custody or under whose control such property is for the time being, to comply with and give effect to such direction.

(5) (a) The Commission shall have the power to issue from time to time, in respect of the holding of any election or the conduct of a Referendum, such guidelines as the Commission may consider appropriate to any broadcasting or telecasting operator or any proprietor or publisher of a newspaper as the case may be, as the Commission may consider necessary to ensure a free and fair election.

(b) It shall be the duty of the Chairman of the Sri Lanka Broadcasting Corporation and the Chairman of the Sri Lanka Rupavahini Corporation, to take all necessary steps to ensure compliance with any guidelines as are issued to them under sub-paragraph (a).

(c) Where the Sri Lanka Broadcasting Corporation and the Sri Lanka Rupavahini Corporation as the case may be, contravenes any guidelines issued by the Commission under sub-paragraph (a), the Commission may appoint a Competent Authority by name or by office, who shall, with effect from the date of such appointment, take over the management of such Broadcasting Corporation or Rupavahini Corporation as the case may be, in respect of all political broadcasts or any other broadcast, which in the opinion of the Commission impinge on the election, until the conclusion of the election and the Sri Lanka Broadcasting Corporation and the Sri Lanka Rupavahini Corporation, shall not, during such period, discharge any function connected with or relating to such management which is taken over by the Competent Authority.

(d) Parliament may be law provide for the powers and functions of the Competent Authority appointed under sub-paragraph (c).

Deployment of
Police by the
Commission.

104C. (1) Upon the making of an Order for the holding of an election or the making of a Proclamation requiring the conduct of a Referendum, as the case may be, the Commission shall notify the Inspector-General of Police of the facilities and the number of police officers required by the Commission for the holding or conduct of such election or Referendum, as the case may be.

(2) The Inspector- General of Police shall make available to the Commission the facilities and police officers specified in any notification made under paragraph (1) of this Article.

(3) The Commission may deploy the police officers and facilities made available to the Commission in such manner as is calculated to promote the conduct of a free and fair election or Referendum, as the case may be.

(4) Every police officer made available to the Commission under paragraph (2) of this Article, shall be responsible to and act under the direction and control of the Commission during the period of an election.

(5) No suit, prosecution or other proceeding, shall lie against any police officer made available to the Commission under this Article for any lawful act or thing in good faith done by such police officer, in pursuance of a direction of the Commission or his functioning under the Commission.

Deployment of
Armed Forces

104D. It shall be lawful for the Commission, upon the making of an Order for the holding of an election or the making of a Proclamation requiring the conduct of a Referendum, as the case may be, to make recommendations to the President regarding the deployment of the armed forces of the Republic for the prevention or control of any actions or incidents which may be prejudicial to the holding or conducting of a free and fair election or Referendum, as the case may be.

Commissioner-
General of
Elections and
other officers of

104E. (1) There shall be a Commissioner-General of Elections who shall, subject to the approval of the Constitutional Council, be appointed by the Commission on such terms and conditions as shall be determined by the Commission.

the Commission.

(2) The Commissioner-General of Elections shall be entitled to be present at meetings of the Commission, except where any matter relating to him is being considered by the Commission. He shall have no right to vote at such meetings.

(3) The Commission may appoint such other officers to the Commission on such terms and conditions as may be determined by the Commission.

(4) The salaries of the Commissioner-General of Elections and the other officers of the Commission, shall be determined by the Commission and shall be charged on the Consolidated Fund.

(5) The Commissioner-General of Elections shall, subject to the direction and control of the Commission, implement the decisions of the Commission and exercise supervision over the officers of the Commission.

(6) The Commission may delegate to the Commissioner-General of Elections or other officer of the Commission, any power, duty or function of the Commission, and the Commissioner-General of Elections or such officer shall exercise, perform and discharge such power, duty or function, subject to the direction and control of the Commission.

(7) The office of the Commissioner-General of Elections shall become vacant -

(a) upon his death;

(b) on his resignation in writing addressed to the Commission;

(c) on his attaining the age of sixty five years;

(d) on his removal by the Commission on account of ill health or physical or mental infirmity; or

(e) on his removal by the Commission on the presentation of an address of Parliament in compliance with the provisions of paragraph (8), for such removal on the ground of proved misbehaviour or incapacity.

(8) (a) The address referred to in sub-paragraph (e) of paragraph (7) of this Article shall be required to be supported by a majority of the total number of Members of Parliament (including those not present) and no resolution for the presentation of such an address shall be entertained by the Speaker or placed on the Order Paper of Parliament, unless notice of such resolution is signed by not less than one-third of the total number of Members of Parliament and sets out full particulars of the alleged misbehaviour or incapacity.

(b) Parliament shall by law or by Standing Orders, provide for all matters relating to the presentation of such an address, including the procedure for the passing of such resolution, the investigation and proof of the alleged misbehaviour or incapacity and the right of the Commissioner-General of Elections to appear and to be heard in person or by representatives.

Returning Officers.

104F. (1) The Commission shall from time to time by notice published in the Gazette appoint by name or by office a person to be a Returning Officer to each electoral district, and may appoint by name or by office one or more persons to assist the Returning Officer in the performance of his duties.

(2) Every Officer appointed under paragraph (1) shall in the performance and discharge of such duties and functions as are assigned to him, be subject to such directions as may be issued by the Commission and shall be responsible and answerable to the Commission therefor.

Public officers

104G. All public officers performing duties and functions at any election or referenda shall act in the performance and discharge of such duties and functions under the directions of the Commission, and shall be responsible and answerable to the Commission therefor.

Power of Supreme Court to issue writs	<p>104H. (1) The jurisdiction conferred on the Court of Appeal under Article 140 of the Constitution shall, in relation to any matter that may arise in the exercise by the Commission of the powers conferred on it by the Constitution or by any other law, be exercised by the Supreme Court.</p> <p>(2) Every application invoking the jurisdiction referred to in paragraph (1), shall be made within one month of the date of the commission of the act to which the application relates. The Supreme Court shall hear and finally dispose of the application within two months of the filing of the same.</p>
Interpretation	<p>104J. In this Chapter “during the period of an election” shall mean the period commencing on the making of a Proclamation or Order for the conduct of a Referendum or for the holding of an election, as the case may be, and ending on the date on which the result of poll taken at such Referendum or election, as the case may be, is declared.</p>
Amendment of Article 107 of the Constitution.	<p>10. Article 107 of the Constitution is hereby amended in paragraph (1) of that Article, by the substitution for the words “shall be appointed by the President of the Republic by warrant under his hand”, of the words “shall, subject to the provisions of Article 41C, be appointed by the President by warrant under his hand.”</p>
Amendment of Article 109 of the Constitution.	<p>11. Article 109 of the Constitution is hereby amended as follows :-</p> <p>(1) in paragraph (1) of that Article, by the substitution for the words “the President shall appoint”, of the words “the President shall, subject to the provisions of Article 41C, appoint”; and</p> <p>(2) in paragraph (2) of that Article, by the substitution for the words “the President may appoint”, of the words “the President may, subject to the provisions of Article 41C, appoint”.</p>
Amendment of Article 111 of the Constitution.	<p>12. Article 111 of the Constitution is hereby amended as follows :-</p> <p>(1) by the repeal of paragraph (2) of that Article and the substitution therefore of the following paragraph :-</p> <p>“(2) The Judges of the High Court shall -</p> <p>(a) on the recommendation of the Judicial Service Commission, be appointed by the President by warrant under his hand and such recommendation shall be made after consultation with the Attorney-General;</p> <p>(b) be removable and be subject to the disciplinary control of the President on the recommendation of the Judicial Service Commission”; and</p> <p>(2) by the addition immediately after paragraph (3) of that Article, of the following new paragraph :-</p> <p>“(4) Any Judge of the High Court may resign his office by writing under his hand addressed to the President”.</p>
Amendment of Article 111A of the Constitution	<p>13. Article 111A of the Constitution is hereby amended in paragraph (1) of that Article, by the substitution for the words “the President may, by warrant, appoint” of the words “the President may, on the recommendation of the Judicial Service Commission, by warrant, appoint”.</p>
Insertion of new Article 111B in the Constitution.	<p>14. The following Article is hereby inserted immediately after Article 111A of the Constitution, and shall have effect as Article 111B of the Constitution :-</p>
“Fiscal for the	<p>111B. There shall be a Fiscal, who shall be the Fiscal for the whole Island and</p>

whole island.

who shall exercise supervision and control over Deputy Fiscals attached to all Courts of First Instance.”

Re-numbering of Article 116 of the Constitution as Article 111C.

15. Article 116 of the Constitution is hereby re-numbered as Article 111C of the Constitution.

Insertion of Chapter XVA in the Constitution.

16. The following new Chapter is hereby inserted immediately after Article 111C of the Constitution, and shall have effect as Chapter XVA of the Constitution :-