

Presidential Elections (Special Provisions)  
Act No. 2 of 1981  
(Certified on 29<sup>th</sup> January, 1981)

L.D. - O. 56/80

AN ACT TO MAKE PROVISIONS FOR THE PROCEDURE FOR THE ELECTION OF THE PRESIDENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA IN TERMS OF ARTICLE 40 OF THE CONSTITUTION AND TO PROVIDE FOR MATTERS CONNECTED THERE WITH OR INCIDENTAL THERETO.

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows :-

1. This Act may be cited as the Presidential Elections (Special Provisions) Act, No. 2 of 1981. Short title.
2. The provisions of this Act shall apply when the office of President shall become vacant in terms of Article 38 (1) of the Constitution. Application of the provisions of this Act.
3. (1). Where the office of President becomes vacant in terms of paragraph (1) of Article 38 of the Constitution, other than sub paragraph (f) of that paragraph, Parliament shall elect as President one of its members who is qualified to be elected to the office of President, to hold office for the un-expired period of the term of office of the President vacating office. Parliament to elect President in certain circumstances.  
(2). Such election shall be held as soon as possible after, and in no case later than one month from, the date of occurrence of the vacancy:  

Provided that if such vacancy occurs after the dissolution of Parliament, the President shall be elected by the new Parliament within one month of its first meeting.
4. The occurrence of a vacancy in the office of President shall, when Parliament has not been dissolved, operate as a summoning of Parliament to meet within three days of such occurrence. The Secretary General of Parliament (hereinafter referred to as the "Secretary-General") shall inform the members of Parliament of the date and time fixed for such meeting. Occurrence of vacancy shall operate as a summoning of Parliament.

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| 5. | When Parliament meets in pursuance of section 4, the Secretary General shall inform Parliament that a vacancy in the office of President has occurred. He shall fix a date and time at which nominations shall be received by him being a date not earlier than forty eight hours and not later than seven days from the date of such meeting.  | Secretary General to inform Parliament of vacancy. |
| 6. | <p>(1). On the date fixed for the receipt of nominations Parliament shall meet and the Secretary General shall act as the returning officer.</p> <p>(2). A member who wishes to propose any other member for election to the office of President shall obtain prior written consent of the member whom he wishes to propose indicating that such member is willing to serve if elected.</p> <p>(3). A member addressing himself to the Secretary General shall propose some other member present in Parliament to the office of President. The proposal shall be seconded by another member, but no debate shall be allowed.</p> <p>(4). If only one member be so proposed and seconded to the office of President he shall be declared by the Secretary General to have been elected to such office. If more than one member be so proposed and seconded, Parliament shall, subject to subsection (2) of section 3, fix a date and time for the holding of the election, such date being a date not later than forty eight hours from the time of receiving nominations.</p> | Nomination day                                     |
| 7. | <p>(1). On the date fixed for the holding of the election, the Secretary General shall act as the returning officer and shall, subject to the following provisions, do all things necessary for the conduct of the election.</p> <p>(2). Before voting commences the returning officer shall show the empty ballot box or boxes to the members and thereafter seal it or them, as the case may be, in their presence.</p> <p>(3). When voting commences, the returning officer shall call out the name of each member including the Speaker who shall proceed to the returning officer's table and receive a ballot paper. The returning officer shall initial the back of the ballot paper with his initials in the presence of the member.</p> <p>(4). The member who receives a ballot paper shall then proceed to the cubicle provided in the chamber and mark his ballot paper.</p>  | Procedure on election day.                         |

- (5). Every ballot paper shall be substantially in the Form in the Schedule hereto, and shall contain the names of all the candidates.
  - (6). When a member has received a ballot paper, he shall signify thereon, in the manner hereinafter provided, for whom he desires to vote. The member shall then fold the ballot paper so that the returning officer's initials thereon may be visible and, having held up the ballot paper in such manner as to enable the returning officer to see the initials, shall put the ballot paper in a ballot box or one of the ballot boxes, if there is more than one, placed on the returning officer's table.
  - (7). If a member inadvertently spoils a ballot paper, he may return it to the returning officer who shall, if satisfied of such inadvertence, give him another ballot paper and the spoilt ballot paper shall be immediately cancelled by such returning officer.
  - (8). The Returning Officer shall, before the voting is due to end, call out a second time the name of any member who has not voted when his name was called out under subsection (3). If such member does not vote after his name is called out a second time, he shall be deemed to have abstained from voting.
8. Each member shall have only one vote. No vote shall be given by proxy. A member in giving his vote -
- Manner of voting.
- (a). shall place on his ballot paper the figure 1 in the square opposite the name of the candidate for whom he votes; and
  - (b). may, in addition, place on his ballot paper the figure 2, or the figures 2 and 3, or the figures 2, 3 and 4, and so on, in the squares opposite the names of the candidates in the order of his preferences.
9. A ballot paper shall be invalid -
- Rejection of ballot papers.
- (a). on which anything is written or marked, by which the member can be identified; or
  - (b). which does not bear the returning officer's initials; or
  - (c). on which the figure 1 is not marked; or
  - (d). on which the figure 1 is marked opposite the name of more than one candidate; or
  - (e). which is unmarked or void for uncertainty.

10. (1). The Returning Officer shall examine the ballot papers and shall, after rejecting any invalid ballot papers, divide the remaining ballot papers according to the first preferences recorded for each candidate. He shall then count the number of preferences recorded for each candidate. The count.
- (2). If any candidate desires to be present at the counting of votes he may do so or if he wishes to appoint another member to represent him at the counting he may inform the returning officer after obtaining the consent of that member.
11. Where any candidate has received more than one half of the valid votes cast, the Returning Officer shall forthwith declare such candidate elected to the office of President. Declaration where a candidate receives absolute majority.
12. (1). Where no candidate has received more than one half of the valid votes cast, the returning officer shall eliminate from the contest the candidate who has received the lowest number of votes, and the second preference of each member whose vote had been for the candidate eliminated from the contest shall be counted as a vote for the candidate for whom such preference is recorded and shall be added to the votes already counted in his favour. Procedure where no candidate receives absolute majority.
- (2). Where after the elimination and count referred to in subsection (1), no candidate has received more than one half of the valid votes cast, the returning officer shall proceed with the count, eliminating after each such count the candidate who has received the lowest number of votes at that count and adding to the number of votes already counted in favour of the remaining candidates -
- (a). the second preference of a member whose vote was in favour of a candidate eliminated from the contest; or
- (b). where such second preference was in favour of a candidate already eliminated from the contest, the third preference of such member; or
- ©. where such third preference was in favour of a candidate already eliminated from the contest, the next preference of such member.

- (3). Where at the end of the count referred to in sub section (2), no candidate has obtained more than one half of the valid votes, the Returning Officer shall declare the candidate who has obtained the majority of the votes at that count, elected to the office of President.
13. (1). Where an equality is found to exist between the votes received by two candidates, and the addition of one vote would determine which candidate would be declared President under this Act, the determination of the candidate to whom such additional vote shall be deemed to have been given for the purpose of such determination shall be made by lot by the Returning Officer in such manner as he may, in his absolute discretion, determine, and he shall declare such candidate elected to the office of President. Equality of votes.
- (2). Where an equality is found to exist between two or more candidates and the addition of one vote would determine which candidate is not to be eliminated under this Act, then the determination of the candidate to whom such additional vote shall be deemed to have been given for the purpose of such determination shall be made by lot by the Returning Officer in such manner as he may, in his absolute discretion, determine.
14. Where the office of President shall become vacant after the dissolution of Parliament, the President shall be elected by the new Parliament within one month of its first meeting. Vacancy occurring during dissolution
15. At the first meeting of the new Parliament in terms of Article 40 (1) of the Constitution the Secretary General shall announce that a vacancy in the office of President has occurred and shall at such meeting receive nominations to fill such vacancy. The provisions of section 6 shall, mutatis mutandis, be applicable to the receipt of nominations under this section. First meeting to be nomination day.
16. The provisions of sections 7,8,9,10,11,12 and 13 shall, mutatis mutandis, apply to and in relation to the election of a President under section 14. Procedure for election, counting of votes, rejection of ballot papers, & c.

17. The Secretary General shall cause to be published in the Gazette the name of the candidate declared to have been elected to the office of President, within three days of the date of such election. Publication in the Gazette.
18. When a member has been declared elected as President the ballot papers shall be placed in a box. The box shall be sealed in the presence of the members and kept in the custody of the Secretary General for six months. After the expiry of such period he shall, subject to any direction he may receive from Parliament, cause such ballot papers to be destroyed and notify Parliament of such destruction. Disposal of ballot papers.
19. (1). The election of a candidate to the office of President shall be declared to be void on an election petition on any of the following grounds which may be proved to the satisfaction of the Supreme Court, namely :- Avoidance of election on election petition.
- (a). that the offence of bribery or undue influence at the election has been committed by the candidate who has been returned or by any person with the knowledge and on behalf of the candidate who has been returned; or
- (b). that the result of the election has been materially affected -
- (i). by reason that the offence of bribery or undue influence at the election has been committed by any person who is neither the candidate who has been returned nor a person acting with his knowledge and on his behalf; or
- (ii). by the improper reception or refusal of a vote, or
- (iii). by any non-compliance with the provisions of the Constitution or of this Act; or
- ©. that the nomination of any candidate has been wrongly rejected.
- (2). For the purposes of subsection (1), the offences of bribery and undue influence at an election shall have the same meaning as in the Parliamentary Elections Act, 1981.
20. (1). Every person who commits the act of undue influence of bribery shall be guilty of an offence, and shall on conviction by a Magistrate be liable to a fine not exceeding five hundred rupees or to imprisonment of either description for a term not exceeding six months or to both such fine and such imprisonment. Punishment and incapacities for undue influence and bribery.

- (2). Every person who is convicted of an offence under this section shall, by conviction, become incapable for a period of seven years from the date of his conviction of being registered as an elector or of voting at an election under this Act or of being elected to the office of President.
- (3). A prosecution under this section shall not be instituted without the sanction of the Attorney-General.
21. (1). No election shall be called in question except by an election petition presented to the Supreme Court. Election petitions.
- (2). An election petition may be presented calling in question an election on one or more of the grounds specified in subsection (1) of section 19 to the Supreme Court by any candidate at such election or by any member of Parliament.
- (3). Any such petition may be presented at any time after the date of publication of the declaration in the Gazette containing the name of the candidate who has been returned at the election, but not later than thirty days from the date of such publication.
22. A petitioner may claim either of the following declarations :- Relief that may be claimed by the petitioner.
- (a). that the election of the returned candidate is null and void; or
- (b). that the election of the candidate who has been returned is void and that he himself if he was a candidate, or any other candidate has been duly elected.
23. (1). At the conclusion of the trial of the election petition, the Supreme Court shall make an order in writing - Orders of the Supreme Court.
- (a). dismissing the election petition; or
- (b). declaring the election of the candidate who has been returned to be void; or
- ©. declaring the election of the candidate who has been returned to be void and the petitioner if he was a candidate, or any other candidate to have been duly elected.
- (2). At the time of making an order under subsection (1), the Supreme Court shall also make an order fixing the total amount of costs payable and specifying the persons by and to whom costs shall be paid.

24. The Supreme Court shall transmit to the Speaker the order made under section 23 (1). Transmission to Speaker of order.
25. (1). Upon the transmission to the Speaker of the order of the Supreme Court as required by section 24 - Effect of order.
- (a). the order shall take effect; and
- (b). the election or the return shall be confirmed or declared null and void and the Speaker shall forthwith present to Parliament such order. If the election is declared null and void the Secretary General shall hold fresh elections.
- (2). The provisions of sections 6,7,8,9,10,11,12 and 13 shall, mutatis mutandis, apply to and in relation to the election of the President under paragraph (b) of subsection (1).

### SCHEDULE

#### FORM OF BALLOT PAPER (FRONT)

Name of candidate	Order of Preference
A.	
B.	
C.	
D.	
E.	