



NATIONAL ELECTION WATCH – SIERRA LEONE

Recent Electoral Reforms Provisions in Sierra Leone

A Simplified Version

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INTRODUCTION

This is a simplified or user-friendly version of the new or amended laws relating to elections in Sierra Leone since the last general elections of 2018. The purpose of extracting and simplifying the new provisions in the new laws or amendments passed since 2018 is to make those provisions easy to understand by stakeholders of elections such as elections management/monitoring bodies, politicians, candidates, political parties, lawyers, the media, and citizens. Foremost among the electoral laws is the enactment of the Public Elections Act 2022 which has paved the way for the adoption of the District Block Proportional Representation System pursuant to the Constitution of Sierra Leone (Amendment) Act, 2001. With the re-introduction of the district block proportional representation system, amendments to some provisions in the Public Elections Act 2012 were inevitable. The Political Parties Act 2022 has transformed the previous Political Parties Registration Commission to a regulatory commission with powers and mandate to regulate and sanction political parties and independent candidates for violation of the code of conduct.

Notable new provisions covered in this work are the numerical increase of the Electoral Commission; the possibility of voting outside Sierra Leone; usage of national identification number (NIN) as proof of eligibility to be registered as a voter; the introduction of a polling centre manager to be responsible for supervising the conduct of the polling process at a polling centre; certification of results from centre to district returning officer; the mandatory provision for every political party to nominate a female in every three nominations; cancellation of votes due to over-voting in a polling station; cancellation of votes due to violence in a polling station; provision for the election of village or town head; establishment of a National Elections Trust Fund; the introduction of a Code of Conduct for Political Parties; and the creation of an Elections Offences and Petitions Division of the High Court.

We hope that this abridged version of the new electoral laws and provisions would be a quick reference and useful guide for all who are involved in electoral processes.

PROVISIONS ON LATEST ELECTORAL REFORMS IN SIERRA LEONE

Colour codes to understand the simplified version of the Recent Electoral Reforms Provisions in Sierra Leone:

Black Constitutional Amendment Act 2022

Blue Notes

Grey References To The Applicable Laws

CONSTITUTIONAL AMENDMENT ACT 2022

1. DISTRICT BLOCK PROPORTIONAL REPRESENTATION (PR) SYSTEM

- a. The electoral system for general elections was changed from the previous single-member constituency system to the District Block Representation System.

NOTES:

- *The District Block Representation System has been adopted as the electoral system for the 2023 general elections. This is not a new provision, but it is a new electoral system distinct from the previous one-member constituency system.*
- *The District Block Representation System means a voting system for electing representatives in electoral districts. Each district shall be assigned a number of seats based on the population data of the last census results in 2021.*

Section 38A of The Constitution of Sierra Leone (Amendment) Act, 2002

- 38A. (1) Where, under any law for the time being in force, a date for a general election of Members of Parliament has been appointed but constituencies have not been established in accordance with subsection (3) of section 38 for the purposes of such election, the President may, after consultation with the Electoral Commission, direct that such election shall be conducted on the basis of the existing districts in a manner to be known as the district block representation system instead of constituencies.
- (2) In the district block representation system, the election shall be contested in each specified district by political parties for the block or number of seats in Parliament allocated to the district by or under an Act of Parliament and the political parties shall be allocated seats in Parliament by the Electoral Commission on the basis of their proportional share of the total district vote.
- (3) Members of Parliament for the seats won by a political party in a district shall be determined by the Electoral Commission from a list of the candidates of that political party for the district submitted to the Electoral Commission before the date of the election and showing the order of preference of the candidates.
- (4) The number of candidates on the list referred to in subsection (3) shall be not less than double the block or number of seats allocated to the district so as to enable vacancies in Parliament to be filled by the Electoral Commission from that list as and when such vacancies occur.

PUBLIC ELECTIONS ACT 2022

2. COMPOSITION OF THE ELECTORAL COMMISSION

- a. The Electoral Commission now comprises the Chief Electoral Commissioner and five (5) other Commissioners each representing one of the country's five regions.

NOTES:

Previously the Electoral Commission was called the National Electoral Commission.

Section 2 (2) of the Public Elections Act 2022

- (2) (a) The Electoral Commission shall consist of the Chief Electoral Commissioner, who shall be the Chairman; and;
- (b) 5 other members who shall be known as Electoral Commissioners, appointed by the President for each region, after consultation with the leaders of all registered political parties, subject to the approval of Parliament and in accordance with subsection (3) of section 32 of the Constitution.

3. REGISTRATION & VOTING OUTSIDE SIERRA LEONE

- a. Registration and transfer of votes may be done outside of Sierra Leone.

NOTES:

Under the 2012 Public Elections Act—section 18, a provision was only made for registering voters outside Sierra Leone. Under the current Act, the Electoral Commission may conduct both registration and voting of voters outside Sierra Leone. While this provision is laudable, it is not mandatory and can only be done at the discretion of the Commission.

Section 15(2)b(ii) of the Public Elections Act 2022

- (2) The Electoral Commission may, from time to time, for the proper execution of its duties –
 - (i) places outside Sierra Leone, for the purposes of registration, voting or transfer of the votes of such voters as may be specified in the order.

4. PROOF OF CLAIM FOR REGISTRATION

- a. A voter can present his National Identification Number (NIN) as proof of eligibility to be registered as a voter.

NOTES:

Citizens can use their national registration which assigns them a unique NIN, as one of several proof of being eligible to register as a voter after meeting the set qualifications.

Section 24(1) of the Public Elections Act 2022

24. (1) A Registration Officer may, in satisfying himself that a person is entitled to be registered as a voter, request from the person, any of the following –
- (a) a birth certificate or a naturalisation certificate;
 - (b) a statutory declaration giving particulars of his birth; Refusal to register.
 - (c) the testimony of a member of the local Council in the area of his residence;
 - (d) National Identification Number;
 - (e) any other satisfactory evidence of his entitlement to be registered as a voter.

5. POLLING CENTRE MANAGER

- a. There is now a Polling Centre Manager responsible for supervising the conduct of the polling process at a polling centre.

NOTES:

The Act is silent on whether Presiding Officers will be under the direction of the Polling Centre Managers.

Section 49 of the Public Elections Act 2022

49. The Electoral Commission shall, after the appointment of the date for presidential election, under section 42, appoint such fit and proper persons to be –
- (b) polling centre Manager who shall be responsible for supervising the conduct of the polling process at a polling centre;

6. DECLARATION OF RESULTS

- a. The Presiding Officer shall at the end of polling count the votes in each polling station and certify the votes stating the number of valid votes cast in favour of each presidential candidate.
- b. The Presiding Officer shall transfer the certified result to the District Returning Officer who will then certify the said results to the Regional Returning Officer.
- c. The Regional Returning Officer shall certify the results to the National Returning Officer.

NOTES:

- *Under the 2012 Act, Presiding Officer only needed to certify to the Regional Officer. There was no certification to the District Returning Officer.*
- *However, the law is unclear about how certified results are transferred from the Presiding Officer to the District Returning Officer to the Regional Returning Officer and last, to the National Returning Officer. Whether certified results can be transmitted electronically is not provided for in the current law.*

Section 51(1) of the Public Elections Act 2022

51. (1) A Presiding Officer shall, after the expiration of the time fixed for polling, count the votes, polling station by polling of election station, certify the result of the counting, stating the number of valid votes cast in favour of each presidential candidate to the District Returning Officer, who shall, in turn, certify the result to the Regional Returning Officer and the Regional Returning Officer shall in turn certified the result to the National Returning Officer:
- (b) a statutory declaration giving particulars of his birth;
Refusal to register.
 - (c) the testimony of a member of the local Council in the area of his residence;
 - (d) National Identification Number;
 - (e) any other satisfactory evidence of his entitlement to be registered as a voter.

7. COMPOSITION OF PARLIAMENT

- a. Members of Parliament shall comprise Paramount Chief Members of Parliament equal to the number of provincial districts and Members of Parliament to be prescribed by Parliament.

NOTES:

In the previous legislation, the number of paramount Chief Members of Parliament (12) and ordinary Members of Parliament was specified as 12 and 120 respectively. The current law does not indicate a specific number.

Section 55 of the Public Elections Act 2022

55. Members of parliament shall comprise the number of –
- (a) Paramount Chief Members of Parliament, equal to the number of provincial districts, in accordance with paragraph (a) of subsection (1) of section 74 of the Constitution;

8. FORM OF GENERAL ELECTIONS

- a. General Elections shall be conducted in accordance with the Constitution of Sierra Leone.
- b. The time for nomination of a candidate for election as a member of parliament shall not be more than 60 days or less than 30 days before the first Saturday in November, after the expiration of the tenure of members of parliament.

NOTES:

Previously, it was a one-member constituency system under subsection (2) of section 38 of the Constitution. Also, the current Act is unclear about the significance of the first Saturday in November. However, it seems that the move might be to set the first Saturday in November as the fixed date for general elections.

Section 56 of the Public Elections Act 2022

56. All Public Elections other than Paramount Chief Member of Parliament shall be as prescribed in the Constitution of Sierra Leone 1991, Act No. 6 of 1991.

Section 57 of the Public Elections Act 2022

57. On the date for the general election of Members of Parliament, other than Paramount Chief Members of Parliament, under section 56, the Electoral Commission shall, by notice published in the Gazette, require that nominations of candidates be delivered to the Electoral Commission or the Returning Officer designated by the Commission before 4 O'clock in the afternoon, which shall not be more than 60 and not less than 30 days before the first Saturday of November, after the expiration of the tenure of Members of Parliament.

9. NOMINATION OF CANDIDATES

- a. For every three candidates nominated by a political party, one of them shall be female.

NOTES:

This is a significant provision for women's empowerment. However, this provision only guarantees nomination but not an election. There is no provision for reserved seats in parliament for women.

Section 58(2) of the Public Elections Act 2022

58. (1) A candidate shall be nominated in writing by 3 voters of the electoral area for which he intends to contest an election and shall not be nominated in more than one electoral area.
- (2) For every 3 candidates nominated under subsection(1), one of them shall be female.

10. OVER-VOTING

- a. Where there is over-voting in a polling station the results shall be cancelled.
- b. Fresh elections shall only be conducted for local or parliamentary elections if the overall result in the electoral areas may be affected.

NOTES:

The previous Act has provision for fresh elections for presidential election if there is over-voting with the potential of the overall result being affected. There is no such provision for a fresh election in the polling station in which over-voting occurred for the presidential election in the current Act, whether or not the overall result may be affected.

Section 84(1) & (2) of the Public Elections Act 2022

84. (1) Where the votes cast at an election at a polling station exceed the number of registered voters in a polling station, the result of the election for that polling station shall be declared null and void voting.
- (2) The Electoral Commission shall schedule another election at a date to be fixed by the Electoral Commission, in the case of parliamentary or local council elections, where the result of the votes cast at a polling station –
 - (a) exceed the number of registered voters; and;
 - (b) may affect the overall result in the electoral area.

11. CANCELLATION DUE TO VIOLENCE

- a. A Counting Officer (Presiding Officer) has the authority to cancel the votes in a polling station where violence occurs during the counting process.
- b. The Commission shall conduct fresh elections if the votes in the affected polling station may affect the outcome of the entire result.

NOTES:

This is a new provision in the current law. It is possible that violence may prevent or disrupt the counting process, but it should not be a basis for the cancellation of results. Counting can be suspended if there is violence and can be done away from the counting area where the violence occurred. Alternatively, counting can be suspended until the violence subsides and resumed afterwards.

Section 85(1) & (2) of the Public Elections Act 2022

85. (1) A Counting Officer may, where violence occurs during the counting of votes in a polling station which significantly disrupts the counting process, cancel the votes in that polling station and the Electoral Commission shall conduct another election if the outcome of votes in the affected polling station will affect the outcome of the entire result.
- (2) Notwithstanding subsection (1), the Electoral Commission may, if satisfied that the result of the election will not be affected by voting in the polling station where the election result is nullified, direct that a return of the election be made.

12. ELECTION OF VILLAGE OR TOWN HEAD

- a. Village or Town head shall be elected by residents in the village or town.
- b. A person to be elected as village or town head shall be:
- i. a citizen and a voter.
 - ii. not less than 30 years.
 - iii. a resident of the village or town for at least 5 years before seeking to be elected.
 - iv. up to date with payments of taxes and rates in the western rural district.
- c. A village or town head shall be elected for 4 years.

NOTES:

There was no provision for the election of village or town heads in the previous Act.

Section 106 of the Public Elections Act 2022

106. A village head or town in the Western Area shall have a head who shall be elected by universal suffrage by residents of the village or town who are voters.

Section 108 of the Public Elections Act 2022

108. (1) A person qualifies to be elected as head of a village or town if that person –
- (a) is a citizen and a voter;
 - (b) is not less than 30 years of age;
 - (c) has resided in the village or town for not less than 5 years immediately before seeking to be elected as a head; and
 - (d) has paid all taxes and rates in the Western Area Rural District as required by law.

Section 109 of the Public Elections Act 2022

109. The head of a Village or Town shall hold office for a period of 4 years.

13. ELECTION PETITION PROCEEDINGS

- a. Cases before the Election Petition Court are to be concluded within 4 months.

NOTES:

Under the previous Act, election petition cases were to be concluded within 6 months.

Section 143(4) of the Public Elections Act 2022

143. (1) There shall be, pursuant to subsection (3) of section 131 of the Constitution, an Election Offences and Petitions Court.
 - (4) The Court shall determine cases brought before it under subsection (3) within 4 months after the commencement of the proceedings.

14. PETITION OF ELECTION OF PRESIDENT IN THE HIGH COURT

- a. Challenge of validity of the election of the presidency is to be done in the Elections Petition Division of the High Court.

NOTES:

Under the old law, the election petition court was authorized to adjudicate disputes relating to the election of members of parliament. The right to be and remain as president can now be petitioned in the election petition court and be determined by a single judge. This provision seems to conflict with section 54, which mandates the Supreme Court to exclusively determine the validity of the election of the president.

Section 144(1) of the Public Elections Act 2022

144. (1) A question which may arise as to the right of a person to be or remain as –
 - (a) President;
 - (b) Member of Parliament;
 - (c) member of a local council,shall be referred to and determined by a Judge of the Court on a petition presented by a voter, in accordance with the procedure under section 149 for the trial of an election petition.

15. NATIONAL ELECTIONS TRUST FUND

- a. An election fund is established to be known as the “National Elections Trust Fund” to be managed by the Electoral Sustainability Commission.

NOTES:

There is no provision on the composition of the Sustainability Commission and how the elections funds can be generated by the said Commission.

Section 163 of the Public Elections Act 2022

163. There is hereby established a fund to be known as the National Elections Trust Fund which shall be managed by the Elections Electoral Sustainability Commission for the financing of elections and referenda.

16. CODE OF CONDUCT (TENTH SCHEDULE)

- a. A code of conduct for local and international observers shall be issued by the Electoral Commission
- b. A code of conduct for political parties, their candidates and independent candidates is provided in the Tenth Schedule.
- c. The Code contains provisions on the following:
 - i. The rights of political parties, their candidates, or independent candidates;
 - ii. Prohibited Conduct;
 - iii. Freedom of access;
 - iv. Power of the Commission to take measures and directives to ensure that the conduct of public elections is done under complete freedom and fairness;
 - v. Cooperation with the Media;
 - vi. Intimidation and coercion;
 - vii. Communication;
 - viii. Campaigning

NOTES:

- *This is a new provision in the current Act. The Code of Conduct however does not prescribe punishment for breach of any of the provisions of the code of conduct.*
- *However, a similar provision is made in Part VIII-section 39 of the Political Parties Act 2022 with provisions for penalties for breach of the listed prohibited conduct.*

Section 165(3)(b)(iii) Public Elections Act 2022

165. (1) A local or international organisation may apply to the Electoral Commission for accreditation to observe an election.

(b) the persons appointed by the applicant will

(iii) subscribe to a Code of Conduct for observers issued by the Electoral Commission pursuant to this Act.

Tenth Schedule (Code of conduct for political parties)

Also, Second Schedule of the Political Parties Act 2022

17. FORMULA FOR ALLOCATING SEATS UNDER THE DISTRICT BLOCK REPRESENTATION SYSTEM

- a. This schedule explains the formula for allocating seats to political parties under the District Block Representation system.

TWELFTH SCHEDULE to the Public Elections Act 2022

DISTRICT BLOCK PROPORTIONAL REPRESENTATION SYSTEM REGULATIONS, 2022

18. MINIMUM THRESHOLD FOR ALLOCATING SEATS TO POLITICAL PARTIES AND INDEPENDENT CANDIDATES

- a. To have a parliamentary seat in a district, a political party or independent candidate shall poll at least 11.9 per cent of the total valid votes cast in the district.
- b. The number of endorsed candidates for parliamentary seats of a political party in order of preference shall be double the seats allocated to a district to enable the Commission to fill in vacancies as and when they occur.
- c. To have a seat in a local council, a political party or independent candidate shall poll at least 4.5 percent of the total valid votes cast in that locality.
- d. The number of endorsed candidates of a political party in order of preference shall be double the seats allocated to a locality.

Regulation 5(1) & 8 of the **PUBLIC ELECTIONS DISTRICT BLOCK PROPORTIONAL REPRESENTATION SYSTEM REGULATIONS, 2022** (Statutory Instrument No.14 of 2022)

5. (1) The basis for calculating the minimum threshold for apportioning seats to political parties and independent candidates under the District Block Representation System shall be based on –
 - (a) the total number of valid votes cast in a district; and
 - (b) the attainment of the minimum threshold of 11.9%.
8. The number of candidates on a party list of endorsed candidates shall be not less than double the block or number of seats allocated to a district so as to enable vacancies in Parliament to be filled by the Electoral Commission from that list as and when such vacancies occur.

Regulation 6(1) & 9 of the **THE PUBLIC ELECTIONS LOCAL COUNCILS PROPORTIONAL REPRESENTATION SYSTEM REGULATIONS, 2022**. (Statutory Instrument No.13 of 2022)

6. (1) The basis for calculating the minimum threshold for apportioning seats to political parties and independent candidates under the Proportional Representation System shall be based on –
 - (a) the total number of valid votes cast in a locality; and
 - (b) the attainment of the minimum threshold of 4.5%.
9. The number of candidates on a party list of endorsed candidates shall be not less than double the number of seats allocated to a locality.

19. POLITICAL PARTIES REGULATION COMMISSION

- a. The Political Parties Regulation Commission is established to replace the Political Parties Registration Commission.
- b. The PPRC now regulates both political parties and independent candidates contesting parliamentary and local elections.
- c. Political parties shall not use state resources to fund campaign or electioneering activities.
- d. PPRC now has the power and mandate to issue fines and to disqualify political parties and independent candidates for breach of the Code of Conduct.

NOTES:

The Code of Conduct in the Second Schedule to the Political Parties Act 2022 is the same as the Code of Conduct in the Twelfth Schedule to the Public Elections Act 2022.

Section 3 of the Political Parties Act 2022

3. (1) There shall continue in existence, the body known as the Political Parties Registration Commission as the Political Parties Regulation Commission.

Section 2 of the Political Parties Act 2022

This Act shall apply to –

- (a) political parties registered under this Act; and
- (b) Independent candidates contesting Parliamentary or local council elections.

Section 35(5) of the Political Parties Act 2022

- (5) A political party shall not use the State’s resources, facilities, or officials to run its day to day activities, campaigns, and other electioneering exercises.

Section 40(2)(d) of the Political Parties Act 2022

- (2) Where a political party or an independent candidate contravenes subsection (1), the Commission –
 - (d) may disqualify the party or independent candidate from contesting the election.

20. ELECTIONS OFFENCES AND PETITIONS DIVISION

- a. A new division of the High Court has been established known as the “Elections Offences and Petitions Division”.
- b. The function of this electoral division is to try electoral offences and to hear and determine election petitions relating to Parliamentary, Local Councils and Village and Town Head Elections.

THE HIGH COURT (DIVISIONAL) AMENDMENT ORDER, 2022 – STATUTORY INSTRUMENT NO.15 of 2022

Order 1:

1. The High Court established under subsection (4) of Section 120 of the Constitution of Sierra Leone, 1991 shall comprise in addition to the Fast Track Commercial and Admiralty Division, Anti-Corruption Division, Industrial and Social Security Division, Family and Probate Division, Land, Property and Environmental Division, Sexual Offences Division, General Division and Criminal Division, a New Division, to be known as “The Elections Offences and Petitions Division.”