

**S.M.C.D. 143**  
**REFERENDUM ACT, 1977**

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**S.M.C.D. 143  
REFERENDUM ACT, 1977(1)**

**AN ACT to regulate the contract of a referendum and to provide for related matters.**

*General*

**1. Polling divisions**

(1) In conformance with article 51 of the Constitution, and the purpose of conducting a referendum the Electoral Commission shall divide every constituency or area into polling divisions and a polling division may be divided into as many polling stations as directed by the Electoral Commission.

(2) Where the boundaries of a constituency or an area are varied in accordance with article 47 of the Constitution and in any other appropriate circumstances the Electoral Commission may alter the number and area of polling divisions within a constituency or an area.

(3) Where the Electoral Commission divides a constituency or an area into polling divisions or alters the number or area of polling divisions within a constituency or an area, the Electoral Commission shall, by constitutional instrument, specify the polling divisions or the alteration which has been made.

**2. Returning officers**

(1) The Electoral Commission shall appoint a returning officer for each constituency or area as occasion requires.

(2) A returning officer may with the prior approval of the Electoral Commission, appoint a deputy to be known as the deputy returning officer as the returning officer thinks necessary.

(3) Subject to the directions given by the Electoral Commission, the powers conferred or functions imposed by this Act on a returning officer may be exercised or performed by the deputy and, to the extent that the deputy is authorised in writing so to do by the returning officer, by the assistants of the returning officer.

**3. Registration of voters**

(1) There shall be a divisional register for each polling division or area.

(2) The divisional registers of the polling divisions in a constituency or area shall together form the register of the constituency or area.

### *Referendum Offences*

#### **4. Offences relating to the ballot**

A person commits an offence and is liable on summary conviction to a term of imprisonment not exceeding five years, if that person

- (a) forges or fraudulently defaces or fraudulently destroys a document relating to the holding of a referendum, or alters that document or delivers to the returning officer a document, knowing the document to be forged; or
- (b) forges or counterfeits or fraudulently destroys a ballot paper or the official mark on a ballot paper; or
- (c) without due authority supplies a ballot paper to a person; or
- (d) sells or offers to sell a document relating to the holding of a referendum without due authority to a person or purchases or offers to purchase the document from a person; or
- (e) not being a person entitled under this Act to be in possession of a document relating to the holding of a referendum, has that person's document in that person's possession; or
- (f) knowingly and intentionally puts into a ballot box anything other than the ballot paper which that person is authorised by law to put in; or
- (g) without due authority, takes out of a polling station a ballot paper or any other document relating to a referendum or is found in possession of a ballot paper or that document outside a polling station; or
- (h) without due authority, destroys, takes, opens, or otherwise interferes with a ballot box, ballot document or any other property in use or intended to be used for the purposes of a referendum; or
- (i) without due authority, prints a ballot paper or what purports to be or is capable of being used as a ballot paper at a referendum; or
- (j) not being authorised so to do under this Act, makes a mark on a ballot paper issued to a person, other than that person, with intent that the ballot paper shall be used to record the vote of that other person.

#### **5. Unauthorised voting**

A person who knowingly

- (a) votes at a referendum at which that person is not entitled to vote, or
- (b) votes more than once at a referendum,

commits an offence and is liable on summary conviction to a term of imprisonment not exceeding five years.

#### **6. Offences by referendum officers**

A referendum officer, clerk, interpreter or any other person having a function to perform whether in pursuance of this Act or otherwise, in relation to a referendum who

- (a) makes in a record, return or any other document which that person is required to keep or make in pursuance of this Act an entry which that person knows or has reasonable cause to believe to be false, or does not believe to be true, or
- (b) permits a person whom that person knows or has reasonable cause to believe not to be a person who is blind or incapacitated from voting by those other physical cause to vote in the manner provided for that person persons, or
- (c) refuses to permit a person whom that person knows or has reasonable cause to believe to be a person who is blind or incapacitated from voting by any other physical cause to vote in the manner provided for those persons, or
- (d) wilfully prevents a person from voting at the polling station at which that person knows or has reasonable cause to believe that person is entitled to vote, or
- (e) wilfully rejects or refuses to count a ballot paper which that person knows or has reasonable cause to believe is validly cast in favour of an issue, or
- (f) wilfully counts a ballot paper as being cast in favour of an issue which that person knows or has reasonable cause to believe was not validly cast for that issue, or
- (g) without reasonable cause, acts or omits to act in breach of official duty,

commits an offence and is liable on summary conviction to a term of imprisonment not exceeding five years.

## **7. Unlawful communication at referendum**

(1) A referendum officer, clerk or interpreter attending at a polling station shall maintain and aid in maintaining the secrecy of the voting and shall not, except for a purpose authorised by law, communicate to a person an information as to

- (a) the name of a voter who has or has not applied for a ballot paper or voted at a polling station, or
- (b) the number on the register of a voter who has or has not applied for a ballot paper or voted at a polling station, or
- (c) the official mark.

(2) A person attending at the counting of votes shall maintain and aid in maintaining the secrecy of the voting and shall not communicate an information obtained at the counting of the votes as to the issue for which a vote is given on a particular ballot paper.

(3) A person shall not

- (a) interfere with or attempt to interfere with a voter when recording the voter's vote, or
- (b) otherwise obtain or attempt to obtain in a polling station information as to the issue in favour of which a voter in that station is about to vote or has voted, or
- (c) communicate at a time to a person information obtained in a polling station as to the issue in favour of which a voter in that station has voted or is about to vote, or as to the number on the ballot paper given to a voter at that station, or

- (d) directly or indirectly induce a voter to display a ballot paper after the voter has marked or selected it so as to make known to any other person the issue in favour of which the voter has or has not voted.

(4) A person who has undertaken to assist

- (a) a blind voter to vote, or
- (b) a voter who is incapacitated from voting by any other physical cause to vote,

shall not communicate at any time to any other person information as to the issue in favour of which that voter intends to vote or has voted, or as to the number on the ballot paper for the use of that vote.

(5) A person who contravenes a provision of this section commits an offence and is liable on summary conviction to a term of imprisonment not exceeding five years.

## **8. Personation**

A person commits an offence of personation if that person

- (a) votes as some other person, whether that other person is living or dead or is a fictitious person, or
- (b) votes for a person whom that person knows or has reasonable grounds for supposing is dead or is a fictitious person.

## **9. Bribery**

(1) A person commits an offence of bribery

- (a) if that person directly or indirectly by any other person on that person's behalf,
  - (i) gives money or procures an office to or for any other person on behalf of a voter, or to or for any other person in order to induce a voter to vote or refrain from voting, or
  - (ii) corruptly does an act on account of a voter having voted or refrained from voting, or
  - (iii) gives such money or makes a procurement to or for a person in order to induce that person to procure, or endeavour to procure, the declaration of a majority of votes in favour of an issue or the vote of any other voter, or
- (b) if on or in consequence of a gift or procurement that person procures or agrees, promises or endeavours to procure the declaration of a majority of votes in favour of an issue or the vote of any other voter, or
- (c) if that person advances or pays money or causes money to be paid to or to the use of any other person with the intent that, that money or a part of the money shall be expended in bribery at a referendum, or knowingly pays money or causes money to be paid to a person in discharge or repayment of money wholly or in part expended in bribery at a referendum, or
- (d) if before or during a referendum that person directly or indirectly, or by any other person on that person's behalf, receives, agrees or contracts for money, gift, loan or valuable consideration or an office, place or employment for personal gain or for any other person for voting or agreeing to vote or for refraining or agreeing to refrain from voting, or
- (e) if after a referendum that person directly or indirectly or by any other person on that person's behalf receives money or valuable consideration on account of a person having voted or

refrained from voting or having induced any other person to vote or to refrain from voting.

(2) For the purposes of subsection (1),

- (a) references to giving money include references to giving, lending, agreeing to give or lend, offering, promising and promising to procure or to endeavour to procure money or valuable consideration, and
- (b) references to procuring office include references to giving, procuring, agreeing to give or procure, offering, promising and promising to procure or to endeavour to procure any office, place or employment.

## **10. Treating**

A person commits an offence of treating

- (a) if that person corruptly or by any other person before, during or after a referendum directly or indirectly gives or provides or pays wholly or in part the expenses of giving or providing meat, drink, entertainment or provision to or for a person,
  - (i) for the purposes of corruptly influencing that person or any other person to vote or refrain from voting, or
  - (ii) on account of that person or any other person having voted or refrained from voting or being about to vote or refrain from voting;
- (b) if that person corruptly accepts or takes meat, drink, entertainment or provision offered in the circumstances and for the purposes mentioned in paragraph (a).

## **11. Undue influence**

A person commits the offence of undue influence

- (a) if that person directly or indirectly or by any other person on that person's behalf,
  - (i) makes use of, or threatens to make use of, force, violence or restraint, or
  - (ii) inflicts or threatens to inflict personally or by any other person a temporal or spiritual injury, damage, harm or loss on or against a person,in order to induce or compel that person to vote or refrain from voting, or on account of that person having voted or refrained from voting, or
- (b) if by abduction, duress or a fraudulent device or contrivance that person impedes or prevails on a voter to vote or to refrain from voting.

## **12. Penalty**

A person who commits an offence under sections 8, 9, 10 or 11 is liable on summary conviction, to a term of imprisonment not exceeding five years.

## **13. Activities prohibited on polling day**

(1) During the hours when a poll is open on polling day a person shall not, within four hundred metres of a polling station, seek to influence, in whatever manner, a person to vote for an issue or to ascertain for which issue a voter intends to vote or has voted.

(2) During the hours when a poll is open on polling day a person shall not, within four hundred metres of a polling station, sell intoxicating liquor.

#### **14. Offence**

A person who contravenes a provision of section 13 commits an offence and is liable on summary conviction to a term of imprisonment not exceeding twelve months.

#### **15. Defacement of notices**

(1) A person who without lawful excuse, the proof of which lies on that person, destroys, mutilates, defaces or removes a notice which is exhibited under the authority of this Act or a document which is made available for inspection in pursuance of this Act commits an offence and is liable on summary conviction to a term of imprisonment not exceeding six months.

(2) A Court convicting a person of an offence under subsection (1) shall, within fourteen days of the conviction, report the conviction in writing to the Electoral Commission.

#### **16. Obstruction of officers**

A person who wilfully obstructs or interferes with a referendum officer in the performance of a function under this Act, commits an offence and is liable on summary conviction to imprisonment for a term not exceeding three years.

#### **17. Unidentified publications**

A person who prints, publishes, distributes or posts up or causes to be printed, published, distributed or posted up an advertisement, a handbill, placard, poster or any other document which refers to a referendum and which does not bear on its face the names and addresses of its printer and publisher commits an offence and is liable on summary conviction to a term of imprisonment not exceeding two years.

#### **18. Consent to prosecution**

(1) A person shall not be prosecuted for an offence under this Act without the consent in writing of the Attorney-General

(2) Subsection (1) does not itself prevent a person, without the consent of the Attorney-General, being

- (a) charged with that offence, or
- (b) arrested with or without warrant in respect of that offence, or
- (c) remanded on bail or in custody in respect of that offence.

(3) In a prosecution for an offence under this Act in relation to a ballot box, ballot paper or any other document the property in that ballot box, ballot paper or any other documents as well as the property in the counterfoil of any ballot papers, shall be stated to be in the Electoral Commission.

### *Determination of Referendum Petitions*

#### **19. Method of testing results of voting**

The validity of the results of the voting in each polling station may be questioned by a petition brought for the purpose under sections 20 to 29, subject to the right of appeal conferred by section 30.

## **20. Presentation of referendum petition**

A petition may be presented to the High Court by one or more of the following persons:

- (a) a person who lawfully voted or had a right to vote at the referendum to which the petition relates, or
- (b) a person claiming to have had a right to vote at the referendum.

## **21. Security for costs**

The presentation of a petition is not valid unless within the time limited by section 22 the person seeking to present the petition gives security for costs amounting to a sum of money determined by the High Court.

## **22. Time**

(1) Subject to this section, a referendum petition shall be presented within seven days after the date of the publication in the *Gazette* of the results of the referendum to which it relates.

(2) A petition questioning the results of the voting in a polling station on an allegation of corrupt practices and specifically alleging the payment of money or any other reward to have been made by a person or on that person's account or with that person's privity, in furtherance of the alleged corrupt practice may be presented within seven days after the date of payment.

(3) The time limit provided under this section for the presentation of a petition shall not be extended.

## **23. Relief which may be granted**

At the trial of a petition, the High Court may,

- (a) grant a declaration that the voting in a polling station to which the petition relates is void, or
- (b) dismiss the petition and declare that the voting in the polling station to which the petition relates was regular.

## **24. Grounds for avoidance of results of referendum**

(1) The voting in a polling station shall be declared void on a petition, if any of the following matters are proved to the satisfaction of the High Court:

- (a) that general bribery, general treating, general intimidation or any other misconduct or circumstances, whether similar to those already enumerated or not, have so extensively prevailed that they may be reasonably supposed to have affected the results of the voting; or
- (b) that there has been non-compliance with a provision of this Act, if it appears that the voting was not conducted in accordance with the principles laid down in that provision or instruction and that the non-compliance affected the result of the voting; or
- (c) that a corrupt practice was committed in connection with the voting.

(2) Despite the provisions of subsection (1),

- (a) where at the trial of a petition the High Court finds, after giving the Attorney-General an opportunity of being heard, that it has been proved to the High Court,
  - (i) that a corrupt practice was not committed on an extensive scale as to affect the results of the voting in a polling station, and
  - (ii) that the person mentioned in connection with the corrupt practice took reasonable means for preventing the commission of a corrupt practice at that voting, and
  - (iii) that in all other respects the voting was free from a corrupt practice on the part of the person so mentioned,
 then if the High Court so recommends, the voting at that polling station shall not, by reason of that practice, be void; or
- (b) where at the trial of a petition the High Court finds that there has been failure to comply with a provision of this Act, and the High Court is satisfied, after giving the Attorney-General an opportunity of being heard,
  - (i) that the voting was conducted in accordance with the principles laid down in this Act, and
  - (ii) that the failure did not affect the voting, the result of the voting in that polling station shall not, by reason of the failure, be void.

## **25. Scrutiny**

(1) Where on a petition it is claimed that a question attracted more votes than that declared in favour of that question, the High Court may direct an examination of the votes cast at the voting in the polling station concerned.

(2) On a scrutiny the following votes, and no others, shall be struck off, namely,

- (a) the vote of a person,
  - (i) whose name was not included in that part of the register which contained the names of the registered voters assigned to the polling station at which the vote was recorded, and
  - (ii) who was not otherwise authorised under this Act to vote at the polling station at which that person's vote was recorded;
- (b) the vote of a person whose vote was procured by bribery, treating or undue influence;
- (c) the vote of a person who committed or procured the commission of personation at the voting;
- (d) the vote of a person proved to have voted more than once at the voting or, in more than one polling station.

(3) The vote of a registered voter shall not be struck off on a scrutiny by reason only of the voter not having been or not being qualified to have the voter's name entered on the register.

(4) A tendered ballot paper proved on a scrutiny to be a valid vote shall be added to the poll.

## **26. Certification of decision**

(1) At the conclusion of the trial of a petition, the High Court shall certify its decision to the Electoral Commission which shall accordingly confirm or alter the return by the returning officer in respect of the

voting to which the petition relates.

(2) Where the decision certified by the High Court under subsection (1) is to the effect that the voting to which the petition relates is void, a writ shall be issued for a fresh voting petition in the polling station concerned.

### **27. Report of Court as to corrupt practice**

Where at the conclusion of the trial of a petition the High Court finds that a person has been proved to have committed the offence of a corrupt practice in connection with the voting to which the petition relates, the Court shall send a written report to the Attorney-General giving the name and description of that person and the nature of the practice and any other information that the High Court considers relevant and appropriate.

### **28. Prohibition of disclosure of vote**

A person who has voted in a referendum shall not, in a proceeding to question the voting in a polling station, be required to state for which question that person has voted.

### **29. Procedure**

(1) The trial of a referendum petition shall be conducted in accordance with the law relating to the trial of civil causes or matters by the High Court in the exercise of its original jurisdiction.

(2) The High Court shall have, for the purposes of the trial the same powers, jurisdiction and authority as it has for the trial of civil causes or matters.

### **30. Appeal**

(1) A person aggrieved by the decision of the High Court may appeal to the Court of Appeal against that decision.

(2) An appeal shall be lodged not later than seven days after the date of the decision of the High Court.

## *Miscellaneous Provisions*

### **31. Proxy voting**

(1) A person is not entitled to appoint a proxy unless that person is resident outside the Republic, nor is that person entitled to have more than one person at a time appointed as a proxy to vote for that person at a referendum.

(2) A person is not qualified to be appointed to vote as a proxy at a referendum unless that person is a registered voter.

(3) A person is not entitled to vote as a proxy at a referendum in a constituency or ward on behalf of more than two voters of whom that person is not the husband, wife, parent, grandparent, brother, sister, child, grandchild, nephew, uncle or niece.

(4) The application for the appointment of a person to vote as a proxy shall be made in the prescribed form to the Electoral Commission not later than thirty days before a referendum.

(5) The Electoral Commission shall issue a proxy paper in pursuance of an application duly made to

the commission for the appointment of a proxy if the Electoral Commission is satisfied that,

- (a) the applicant is registered as a voter for the referendum to which the application relates, and
- (b) the proxy is qualified to be, and is willing to be, appointed.

(6) The appointment of a proxy may be cancelled by the Electoral Commission if a notice in that behalf is given by the person who made the application for the appointment of the proxy.

(7) The Electoral Commission shall keep a record of persons for whom proxies have been appointed and the names and addresses of the persons so appointed.

### **32. Misnomer**

A misnomer or an inaccurate description of a person or place named or described in a register, notice or any other document prepared or issued under this Act shall not, if that person or place is so designated as to be commonly identifiable or understood, affect as respects that person or place the validity of that register, notice or document or the operation of this Act.

### **33. Exemption from stamp duty**

A declaration of secrecy made for the purposes of a referendum does not constitute an instrument liable for duty under a law relating to stamp duties.

### **34. Interpretation**

In this Act, unless the context otherwise requires,

“**area**” means the area of authority of a District Assembly;

“**constituency**” means one of the constituencies into which Ghana is for the time being divided;

“**corrupt practice**” means the offence of personation, bribery, treating or undue influence or of aiding, abetting, counselling or attempting the commission of that offence;

“**court**” means a court of competent jurisdiction;

“**District Assembly**” includes District, Municipal or Metropolitan Assemblies and any other local government division or area committee established pursuant to the Local Government Act, 1993 (Act 462);

“**divisional register**” means the register relating to a polling division;

“**functions**” includes powers and duties;

“**issue**” means question or matter submitted to a vote in a referendum to ascertain the wishes of the citizens of Ghana;

“**official mark**” means the official mark with which a ballot paper is perforated or stamped;

“**polling assistant**” means a polling assistant so appointed for the purposes of a referendum;

“**polling day**” in relation to a referendum means the day appointed for the taking of a poll;

“**polling division**” means one of the polling divisions into which a constituency or area is for the time being divided pursuant to the provisions of section 1;

“**polling station**” means one of the polling stations within a polling division;

**“presiding officer”** means the presiding officer of a polling station at a referendum;

**“referendum officer”** means a returning officer, a deputy or assistant returning officer, a presiding officer or a polling assistant and any other person so designated by the Electoral Commission;

**“register”** means a register of voters.

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## Endnotes

### 1 (Popup - Footnote)

1. The Act was issued as the Referendum Decree, 1977 (S.M.C.D 143) made on the 30th day of December, 1977 and notified in the *Gazette* on 6th January, 1978.