

**CONSTITUTION (AMENDMENT) BILL, 2022**

**MEMORANDUM**

This Bill seeks to amend the Constitution in order to—

- (a) the name of Electoral Commission to Malawi Electoral Commission;
- (b) prescribe the period for holding by-elections;
- (c) provide for the minimum and maximum number of members of the Electoral Commission;
- (d) provide for a change in the intervals for the review, by the Electoral Commission, of existing constituency boundaries; and
- (e) provide for more clarity on the conduct of second poll in presidential elections where majority of more than fifty percent is not obtained by any candidate in the first poll.

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ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Amendment of s. 63 of the Constitution
3. Amendment of s. 75 of the Constitution
4. Amendment of s. 76 of the Constitution
5. Amendment of s. 80 of the Constitution

**A B I L L**

*entitled*

ENACTED by the Parliament of Malawi as follows —

1. This Act may be cited as the Constitution (Amendment) Act, 2022. Short title
2. Section 63 (2) of the Constitution is amended, by deleting paragraph (b) of the proviso and substituting therefor the following new paragraph— Amendment of s. 63 of the Constitution

“(b) any by-election to fill the vacancy shall be held in the next quarter of the calendar year after the seat of the member becomes vacant, or if the circumstances do not so permit, then as expeditiously as possible, but a by-election shall not be held where a vacancy occurs within twelve months before the holding of a general election.”.
3. Section 75 of the Constitution is amended by— Amendment of s. 75 of the Constitution
  - (a) deleting subsection (1) and substituting therefor the following new subsection—

“(1) There shall be a commission known as Malawi Electoral Commission which shall consist of a Chairperson who shall be a Judge, nominated in that behalf by the Judicial Service Commission and appointed by the President, and such other members, not being less than four and not more than six, as may be appointed in accordance with an Act of Parliament.”; and

(b) deleting the words “Electoral Commission” wherever they appear in the section and substituting therefor the words “Malawi Electoral Commission”.

Amendment  
of s. 76 of  
the  
Constitution

4. Section 76 of the Constitution is amended—

(a) by deleting the words “Electoral Commission” wherever they appear in the section and substituting therefor the words “Malawi Electoral Commission”; and

(b) in subsection (2) (b), by deleting the word “five” and substituting therefor the word “ten”.

Amendment  
of s. 80 of the  
Constitution

5. Section 80 of the Constitution is amended by deleting subsection (2) and substituting therefor the following new subsection—

“(2) The President shall be elected by a majority of more than fifty percent of the valid votes cast through direct, universal and equal suffrage and where a majority of more than fifty percent is not obtained by any candidate in the first poll, a second poll shall be held within sixty days after declaration of the results in the first poll, in accordance with an Act of Parliament.”.

#### OBJECTS AND REASONS

The principal object of this Bill is to amend the Constitution in order to change the name of the Electoral Commission to Malawi Electoral Commission; to prescribe the period for holding by-elections; to provide for the minimum and maximum number of members of the Electoral Commission; to provide for a change in the intervals for the review of existing constituency boundaries; and to provide for more clarity on the conduct of second poll in presidential elections where majority of more than fifty percent is not obtained by any candidate in the first poll.

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