

ELECTORAL (AMENDMENT) ACT, 2010

EXPLANATORY MEMORANDUM

This Act amends the Electoral Act, 2010 among other things, to provide for adequate time for the Independent National Electoral Commission to issue notices, receive nomination of candidates from political parties and ensure the proper conduct of political parties.

ELECTORAL (AMENDMENT) ACT, 2010

ARRANGEMENT OF SECTIONS

SECTION:

1. Amendment of Electoral Act No. 6, 2010
2. Amendment of section 3 of the Principal Act
3. Amendment of section 4 of the Principal Act
4. Amendment of section 10 of the Principal Act
5. Amendment of section 15 of the Principal Act
6. Amendment of section 19 of the Principal Act
7. Amendment of section 23 of the Principal Act
8. Substitution for section 25 of the Principal Act
9. Amendment of section 27 of the Principal Act
10. Amendment of section 31 of the Principal Act
11. Substitution for section 33 of the Principal Act
12. Amendment of section 43 of the Principal Act
13. Substitution for section 47 of the Principal Act
14. Amendment of section 77 of the Principal Act
15. Amendment of section 78 of the Principal Act
16. Amendment of section 82 of the Principal Act
17. Amendment of section 85 of the Principal Act
18. Amendment of section 86 of the Principal Act
19. Substitution for section 87 of the Principal Act
20. Substitution for section 88 of the Principal Act
21. Amendment of section 90 of the Principal Act
22. Amendment of section 91 of the Principal Act
23. Amendment of section 94 of the Principal Act
24. Amendment of section 99 of the Principal Act.
25. Amendment of section 102 of the Principal Act.
26. Amendment of section 108 of the Principal Act
27. Amendment of section 121 of the Principal Act
28. Amendment of section 122 of the Principal Act
29. Amendment of section 124 of the Principal Act
30. Amendment of section 131 of the Principal Act
31. Amendment of section 133 of the Principal Act
32. Deletion of section 134 of the Principal Act
33. Amendment of section 140 of the Principal Act
34. Amendment of section 144 of the Principal Act
35. Amendment of section 151 of the Principal Act
36. Amendment of section 156 of the Principal Act.
37. Amendment of section 157 of the Principal Act
38. Amendment of the First Schedule of the Principal Act
39. Citation

ELECTORAL (AMENDMENT) ACT, 2010

A Bill

For

An Act to amend the Electoral Act No. 6, 2010 among other things, to provide for adequate time for the Independent National Electoral Commission to issue notices, receive nomination of candidates from political parties and ensure the proper conduct of political parties.

- | | [|] | Commencement |
|----|--|---|---|
| 1. | The Electoral Act No. 6, 2010, (in this Act referred to as "the Principal Act") is amended as set out in this Act. | | Amendment of Electoral Act No. 6, 2010. |
| 2. | Section 3(2)(c) of the Principal Act is amended by substituting for the word "aids" and "a coma" in line 1, the words "aid and". | | Amendment of section 3 of the Principal Act. |
| 3. | Section 4(1) of the Principal Act is amended—
(a) paragraph (c), in line 3, by deleting the words "so however that";

(b) in paragraph (e), by deleting the words "and in connection with", at the beginning of the paragraph. | | Amendment of section 4 of the Principal Act. |
| 4. | Section 10 of the Principal Act is amended—
(a) in subsection (1), line 1, by substituting for the figures "10(5)" the figures "9(5)";
(b) in subsection (4), line 2, by substituting for the figure "31" the figure "30"; and
(c) in subsection (5), line 1, by substituting for the word "by-election" the word "bye-election". | | Amendment of section 10 of the Principal Act. |
| 5. | Section 15 of the Principal Act is substituted for a new section "15"—

"The Commission shall cause a voters' register for each State to be printed, and any person or political party may obtain from the Commission, on payment of such fees as may be determined by the Commission, a certified copy of any voters' register for the State or for a Local Government or Area Council or registration area within it." | | Amendment of section 15 of the Principal Act. |
| 6. | Section 19 of the Principal Act is amended by substituting for the figures "16(1)", in line 1, the figure "9(5)". | | Amendment of section 19 of the Principal Act. |
| 7. | Section 23 (c) of the Principal Act is amended by inserting a semi-colon – ";" immediately after the word person in line 2. | | Amendment of section 23 of the Principal Act. |
| 8. | Section 25 of the Principal Act is substituted for a new section "25"— | | Substitution for section 25 of the Principal Act. |

25 (1) Election to each House of the National Assembly shall hold on a date to be appointed by the Independent National Electoral Commission in accordance with the Constitution and this Act.

"Days of election

(2) The date mentioned in subsection (1) of this section shall not be earlier than 150 days and not later than 30 days before the House stands dissolved, or where the election is to fill a vacancy occurring more than 90 days before such date, not later than 30 days.

(3) Elections to the House of Assembly of a State shall be held on a date to be appointed by the Independent National Electoral Commission in accordance with the Constitution and this Act.

(4) The date mentioned in subsection (3) of this section shall not be earlier than 150 days and not later than 30 days before the House stands dissolved, or where the election is to fill a vacancy occurring more than 90 days' before such date, not later than 30 days.

(5) An election to the office of President shall be held on a date to be appointed by the Independent National Electoral Commission in accordance with the Constitution and this Act.

(6) An election to the said office of the President shall be held on a date not earlier than 150 days and not later than 30 days before the expiration of the term of office of the last holder of that office.

(7) An election to the office of the Governor of a State shall be held on a date to be appointed by the Independent National Electoral Commission in accordance with the Constitution and this Act.

(8) An election to the office of the Governor of a State shall be held on a date not earlier than 150 days and not later than 30 days before the expiration of the term of office of the last holder of that office."

9. Section 27 of the Principal Act is amended-

Amendment of section 27 of the Principal Act.

- (a) in subsection (2)(h), by deleting the word "who" in line 1.
- (b) by a new subsection "(3)"
- (c) renumbering subsection (2)(h) as a new subsection "(3)"

"(3) The Chief Electoral Commissioner shall be the Returning Officer at the Presidential election".

10. Section 31 of the Principal Act is amended-

Amendment of section 31 of the Principal Act.

- (a) by substituting for subsection (1), a new subsection (1)-

"(1) Every political party shall, not later than 60 days before the date appointed for a general election under the provisions of this Bill, submit to the Commission, in the prescribed forms, the list of the candidates the party proposes to sponsor at the elections, provided that the Commission shall not reject or disqualify candidate(s) for any reason

whatsoever."

- (b) in subsection (2), line 2, by inserting immediately after the word "the"-
 - (i) the words "Federal High Court"; and
 - (ii) immediately after the word "State", the words or Federal Capital Territory"; and
- (c) By substituting for subsection (5) a new subsection "(5)"-

"(5) Any person who has reasonable grounds to believe that any information given by a candidate in the affidavit or any document submitted by that candidate is false may file a suit at the Federal High Court, High Court of a State or FCT against such person seeking a declaration that the information contained in the affidavit is false".

11. Section 33 of the Principal Act is amended by substituted for a new section "33"-

Substitution for section 33 of the Principal Act.

Political parties changing candidate
"33. A political party shall not be allowed to change or substitute its candidate whose name has been submitted pursuant to section 31 of this Act, except in the case of death or withdrawal by the candidate".

12. Section 43 of the Principal Act is amended by substituting for subsection (4) a new subsection "(4)"-

Amendment of section 43 of the Principal Act.

"(4) The Polling Agent shall be entitled to be present at the distribution of election materials, voting, counting, collation and the announcement of election results".

13. Section 47 of the Principal Act is substituted for a new section "47"-

Substitution for section 47 of the Principal Act.

Hour of polls
"47 Voting in any particular election under this Act shall take place on the date and time appointed by the Commission throughout the Federation".

14. Section 77 of the Principal Act is amended in subsection (2), line 4, by deleting the words "Access to election documents".

Amendment of section 77 of the Principal Act.

15. Section 78 of the Principal Act is amended by inserting a new subsection "(7a)" immediately after the existing subsection 6-

Amendment of section 78 of the Principal Act.

"(7a) The Commission shall have power to deregister political parties on the following grounds-

- (i) breach of any of the requirements for registration, and
- (ii) for failure to win Presidential or Governorship election or a seat in the National or State Assembly election.

16. Section 82 of the Principal Act is amended in subsection (3)(b), lines 1 and 2, by deleting the words "or independent candidate".

Amendment of section 82 of the Principal Act.

17. Section 85 of the Principal Act is amended by substituting for subsection (2) a new subsection "(2)"-

Amendment of section 85 of the Principal Act.

"(2) The Commission may, with or without prior notice to the political party attend and observe any convention, congress, conference or meeting which is convened by a political party for the purpose of-

- (a) electing members of its executive committees or other governing bodies;
- (b) nominating candidates for an election at any level; and
- (c) approving a merger with any other registered political party".

18. Section 86 (1) is amended by substituting for subsection (1) a new subsection (1)-

Amendment of section 86 of the Principal Act.

"(1) The Commission shall keep records of the activities of all the registered Political Parties".

19. Section 87 of the Principal Act is substituted for a new section "87"-

Substitution for section 87 of the Principal Act.

Nomination of candidates by parties

"(87 (1) A political party seeking to nominate candidates for elections under this Act shall hold primaries for aspirants to all elective positions.

- (2) The procedure for the nomination of candidates by political party for the various elective positions shall be by direct or indirect primaries.
- (3) A political party that adopts the direct primaries procedure shall ensure that all aspirants are given equal opportunity of being voted for by members of the party.
- (4) A political party that adopts the system of indirect primaries for the choice of its candidates shall adopt the procedure outlined below-
 - (a) in case of nomination to the position of presidential candidate, a party shall,
 - (i) hold a special presidential convention in the Federal Capital Territory or any other place within the Federation that is agreed by the National Executive Committee of the party where delegates shall vote for each of the aspirants at the designated centre, and
 - (ii) the aspirant with the highest number of votes at the end of voting, shall be declared the winner of the Presidential primaries of the political party and the aspirant name shall be forwarded to the Independent National Electoral Commission as the candidate of the party;
 - (b) in the case of nomination to the positions of Governorship candidate, a political party shall, where it intends to sponsor candidates-
 - (i) hold a special congress in the State Capital with delegates voting for each of the aspirants at the congress to be held on a specified date appointed by the National Executive Committee (NEC) of the party, and
 - (ii) the aspirant with the highest number of votes at the end of the voting shall be declared the winner of the primaries of the party and the aspirant's name shall be forwarded to the Commission as the candidate of the party, for the particular State;
 - (c) in the case of nomination to the position of a candidate to the Senate, House of

Representatives and State House of Assembly, a political party shall, where it intends to sponsor candidates-

- (i) hold special congresses in the Senatorial District, Federal Constituency and the State Assembly constituency respectively, with delegates voting for each of the aspirants in designated centre on specified dates, and
- (ii) the aspirant with the highest number of votes at the end of voting shall be declared the winner of the primaries of the party and the aspirant's name shall be forwarded to the Commission as the candidate of the party;

(d) in the case of the position of a Chairmanship candidate of an Area Council, a political party shall, where it intends to sponsor candidates-

- (i) hold special congresses in the Area Councils, with delegates voting for each of the aspirants at designated centres on a specified date, and
- (ii) the aspirant with the highest number of votes at the end of voting shall be declared the winner of the primaries of the party and the aspirant's name shall be forwarded to the Commission as the candidate of the party.

(5) In the case of a Councillorship candidate, the procedure for the nomination of the candidate shall be by direct primaries in the ward and the name of the candidate with the highest number of votes shall be submitted to the Commission as the candidate of the party.

(6) Where there is only one aspirant in a political party for any of the elective positions mentioned in paragraph (4)(a), (b), (c) and (d), the party shall convene a special convention or congress at a designated centre on a specified date for the confirmation of such aspirant and the name of the aspirant shall be forwarded to the Commission as the candidate of the party.

(7) A political party that adopts the system of indirect primaries for the choice of its candidate shall clearly outline in its constitution and rules the procedure for the democratic election of delegates to vote at the convention, congress or meeting, in addition to delegates already prescribed in the constitution of the party.

(8) A political appointee at any level shall not be an automatic voting delegate at the convention or congress of any political party for the purpose of nomination of candidates for any election, except where such a political appointee is also an officer of a political party.

(9) Notwithstanding the provisions of this Act or rules of a political party, an aspirant who complains that any of the provisions of this Act and the guidelines of a political party has not been complied with in the selection or nomination of a candidate of a political party for election, may apply to the Federal High Court or the High Court of a State or FCT, for redress.

(10) Nothing in this section shall empower the courts to stop the holding of primaries or general election or the processes thereof under this Act pending the determination of a suit".

20. Section 88 of the Principal Act is substituted for a new section "88"-

Substitution for section 88 of the Principal Act.

Offences in relation to finances of a political party

"88 Any Political Party that-

(a) holds or possesses any fund outside Nigeria in contravention of section 225(3)(a) of the Constitution, commits an offence and shall on conviction forfeit the funds or assets purchased with such funds to the Commission and in addition may be liable to a fine of not less than ₦500,000.00; or

(b) retains any fund or other asset remitted to it from outside Nigeria in contravention of section 225(3)(a) of the Constitution is guilty of an offence and shall on conviction forfeit the funds or assets to the Commission and in addition may be liable to a fine of not less than ₦500,000.00."

21. Section 90 of the Principal Act is amended by deleting the impression "(1)" in line 1.

Amendment of section 90 of the Principal Act.

22. Section 91 of the Principal Act is amended by-

(a) substituting for subsection (4), a new subsection "(4)"-

Amendment of section 91 of the Principal Act.

"(4) The maximum amount of election expenses to be incurred by a candidate in respect of Senatorial and House of Representatives seats shall be ₦40,000,000 and ₦20,000,000 respectively";

(b) in subsection (10)(c), line 1, by deleting the words "in the National Assembly election"; and

(c) subsection 10)(d), line 1, by deleting the words "in the National Assembly election".

23. Section 94 of the Principal Act is amended in subsection (3), line 5, by deleting the words "Conduct at political rallies, and processions, etc."

Amendment of section 94 of the Principal Act.

24. Section 99 of the Principal Act is amended in subsection (2) paragraph (b) by substituting the comma - "," after the word candidate in line 3, for a semi-colon - ";"

Amendment of section 99 of the Principal Act.

25. Section 102 of the Principal Act is amended in subsection (3), line 6, by deleting the words "Campaign based on religion, tribe, etc."

Amendment of section 102 of the Principal Act.

26. Section 108 of the Principal Act is amended-

(a) in subsection (2), line 1, by substituting for the word "by-election" the word "bye-election"; and

Amendment of section 108 of the Principal Act.

(b) in subsection (3), line 2, by substituting for the figure "90" the figure "30".

27. Section 121 of the Principal Act is amended in subsection (1)-

Amendment of section 121 of the Principal Act.

(a) by inserting immediately after the word "of", in line 1, the word "conveying"; and

(b) in subsection (2), by inserting a semi colon ";" immediately after the word "section" in line 2.

28. Section 122 of the Principal Act is amended by substituting for subsection (2), a new subsection "(2)"-
 Amendment of section 122 of the Principal Act.
 "(2) Any person who commits the offence of impersonation or who aids, abets, counsels or procures the commission of that offence, shall be liable on conviction to a maximum fine of N500,000 or imprisonment for 12 months or both."
29. Section 124 (1) of the Principal Act is amended by deleting paragraph (a), and renumbering the paragraphs appropriately.
 Amendment of section 124 of the Principal Act.
30. Section 131 of the Principal Act is amended-
 Amendment of section 131 of the Principal Act.
 (a) by deleting the impression "(1)" in line 1; and
 (b) in paragraph (d), by substituting for the words "by preventing" in line 1, the word "prevents"; and
 (c) in paragraph (d), by inserting a semi colon ";" immediately after the word "election" in line 3.
31. Section 133 (2)(a) of the Principal Act is amended by deleting the words "or Governorship" in line 1.
 Amendment of section 133 of the Principal Act.
32. Section 134 of the Principal Act is deleted.
 Deletion of section 134 of the Principal Act.
33. Section 140 of the Principal Act is amended-
 Amendment of section 140 of the Principal Act.
 (a) in the marginal note, by substituting for the word "Notification" the word "Nullification";
 (b) by substituting for subsection (2) a new subsection "(2)"-
 "(2) Where an election tribunal or court nullifies an election on the ground that the person who obtained the highest votes at the election was not qualified to contest the election, or that the election was marred by substantial irregularities or non-compliance with the provisions of this Act, the election tribunal or court shall not declare the person with the second highest votes or any other person as elected, but shall order for a fresh election"; and
 (c) by deleting subsection (4)
34. Section 144 of the Principal Act is amended-
 Amendment of section 144 of the Principal Act.
 (a) by substituting for subsection (1), a new subsection "(1)"-
 "(1) Where the Commission has been joined as a respondent in an election petition, a Legal Officer of the Commission or a Legal Practitioner engaged by the Commission shall

28. Section 122 of the Principal Act is amended by substituting for subsection (2), a new subsection "(2)"-
 Amendment of section 122 of the Principal Act.
 "(2) Any person who commits the offence of impersonation or who aids, abets, counsels or procures the commission of that offence, shall be liable on conviction to a maximum fine of N500,000 or imprisonment for 12 months or both."
29. Section 124 (1) of the Principal Act is amended by deleting paragraph (a), and renumbering the paragraphs appropriately.
 Amendment of section 124 of the Principal Act.
30. Section 131 of the Principal Act is amended-
 Amendment of section 131 of the Principal Act.
 (a) by deleting the impression "(1)" in line 1; and
 (b) in paragraph (d), by substituting for the words "by preventing" in line 1, the word "prevents"; and
 (c) in paragraph (d), by inserting a semi colon ";" immediately after the word "election" in line 3.
31. Section 133 (2)(a) of the Principal Act is amended by deleting the words "or Governorship" in line 1.
 Amendment of section 133 of the Principal Act.
32. Section 134 of the Principal Act is deleted.
 Deletion of section 134 of the Principal Act.
33. Section 140 of the Principal Act is amended-
 Amendment of section 140 of the Principal Act.
 (a) in the marginal note, by substituting for the word "Notification" the word "Nullification";
 (b) by substituting for subsection (2) a new subsection "(2)"-
 "(2) Where an election tribunal or court nullifies an election on the ground that the person who obtained the highest votes at the election was not qualified to contest the election, or that the election was marred by substantial irregularities or non-compliance with the provisions of this Act, the election tribunal or court shall not declare the person with the second highest votes or any other person as elected, but shall order for a fresh election"; and
 (c) by deleting subsection (4)
34. Section 144 of the Principal Act is amended-
 Amendment of section 144 of the Principal Act.
 (a) by substituting for subsection (1), a new subsection "(1)"-
 "(1) Where the Commission has been joined as a respondent in an election petition, a Legal Officer of the Commission or a Legal Practitioner engaged by the Commission shall

represent the Commission at the Tribunal or Court”;

(b) in subsection (3), line 4, by deleting the words “Legal representation of Commission, etc.”

35. Section 151 (2) of the Principal Act is amended deleting the words “but shall not otherwise be open for inspection” in line 6. Amendment of section 151 of the Principal Act.

36. Insert, in alphabetical order, the following interpretation under section 156 of the Principal Act- Amendment of section 156 of the Principal Act.

“Primaries” means an intra-party election by voters of a given political party to nominate candidates for elective office in accordance with a political party’s constitution and the law;

“Direct Primaries” means an election at which candidates for elective office are chosen by direct vote of political party members instead of by delegates at a convention or congress;

“Indirect Primaries” means an intra-party election where a political party’s delegates to a party convention or congress elect the party’s candidates; and

“Aspirant” means a person who aspires or seeks or strives to contest an election to a political office.

37. Section 157 of the Principal Act is amended by substituting the existing section with the following new provision- Amendment of section 157 of the Principal Act.

“The Electoral Act 2006 is hereby repealed”

38. The First Schedule to the Electoral Act, 2010 is amended- Amendment of the First Schedule of the Principal Act.
(a) by deleting paragraph 4 (7) and (8);
(b) in paragraph 9, by deleting sub paragraph (5)
(c) in paragraph 12, by inserting a new sub paragraph (5)-

“(5) A respondent who has an objection to the hearing of the petition shall file his reply and state the objection therein, and the objection shall be heard along with the substantive petition” Amendment of Paragraph 5 of the First Schedule to the Electoral Act.

(d) in paragraph 18-

(i) by substituting for the words “whichever is the case” in sub paragraph (1), line 3, the words “as the case may be”, and

(ii) by inserting a new sub paragraph (8)(c)-

“(c) allot time for the cross examination of witnesses having regard to the number of witnesses to be called.”;

(e) in paragraph 22, by substituting for the figure “16”, in line 3, the figure “20”;

(f) in paragraph 25 (2), by substituting for the word "recommended" in line 3, the word "recommenced";

(g) in paragraph 27, by substituting for the word "on" in the heading, line 2, the word "of";

(h) in paragraph 28 (2), by substituting for the figure "138", in line 2, the figure "140";

(i) in paragraph 34 (1), by deleting the words "other than the Electoral Officer, the Returning Officer or Presiding Officer," in lines 1 and 2;

(j) in paragraph 37 (5), line 2, by deleting the words "or by a respondent who was";

(k) in paragraph 41, by-

(i) substituting for the word "of", the word "at", in the heading to the paragraph

(ii) deleting immediately after the word "court" in sub paragraph (8), lines 1 and 2, the words "after an applicant has shown exceptional circumstances"; and

(iii) inserting a new sub paragraph "(10)"-

"(10)- The petitioner in proving his case shall have not more than 14 days to do so and each of the respondents shall have not more than 10 days to present its defence";

(l) in paragraph 45, by substituting for subparagraph (1) a new paragraph "(1)"-

"(1) The tribunal or court shall have power, subject to paragraph 16 of this Schedule, to enlarge time for doing any act or taking any proceeding on such terms (if any) as the justice of the case may require except as otherwise provided by any other provision of this Schedule";

(m) in paragraph 49, by substituting for the word "of", the word "or" in the heading; and

(n) in paragraph 51, by substituting for sub paragraph (1), a new subparagraph "(1)"-

"(1)-

(a) Where an election petition complains of the conduct of an Electoral Officer: a Presiding Officer, Returning Officer or any other official of the Commission the officer or person shall not be joined as a necessary party in the petition notwithstanding the nature of the conduct; and

(b) the Commission shall be made a respondent and be deemed to be defending the petition in all cases in sub paragraph (1) itself and on behalf of its officers or such other persons who acted on behalf of the Commission".

I CERTIFY, IN ACCORDANCE WITH SECTION 2 (1) OF THE ACTS AUTHENTICATION ACT, CAP. A2, LAWS OF THE FEDERATION OF NIGERIA 2004, THAT THIS IS A TRUE COPY OF THE BILL PASSED BY BOTH HOUSES OF THE NATIONAL ASSEMBLY.

Salisu

SALISU ABUBAKAR MAIKASUWA, mni

CLERK TO THE NATIONAL ASSEMBLY

29th Day of December, 2010

Schedule to Electoral (Amendment) Bill, 2010

(1) SHORT TITLE OF THE BILL	(2) LONG TITLE OF THE BILL	(3) SUMMARY OF THE CONTENTS OF THE BILL	(4) DATE PASSED BY THE SENATE	(5) DATE PASSED BY THE HOUSE OF REPRESENTATIVES
ELECTORAL (AMENDMENT) BILL, 2010	An Act to amend the Electoral Act No. 6, 2010, among other things, to provide for adequate time for the Independent National Electoral Commission to issue notices, receive nomination of candidates from political parties and ensure the proper conduct of political parties.	This Bill amends the Electoral Act No. 6, 2010, among other things, to provide for adequate time for the Independent National Electoral Commission to issue notices, receive nomination of candidates from political parties and ensure the proper conduct of political parties.	21 st December, 2010	21 st December, 2010

I certify that this Bill has been carefully compared by me with the decision reached by the National Assembly and found by me to be true and correct decision of the Houses and is in accordance with the provisions of the Acts Authentication Act Cap. A2, Laws of the Federation of Nigeria, 2004.

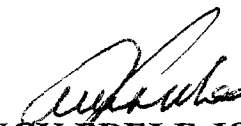


SALISU ABUBAKAR MAIKASUWA, mni

Clerk to the National Assembly

29th Day of December, 2010

I ASSENT.



DR. GOODLUCK EBELE JONATHAN, GCFR

President of the Federal Republic of Nigeria

29th Day of December, 2010