

H.B. 11, 2022.]

ELECTORAL AMENDMENT BILL, 2022

MEMORANDUM

This Bill seeks to amend certain sections of the Electoral Act [*Chapter 2:13*] (No. 25 of 2004) to complete the alignment of certain provisions of that Act with the new Constitution as amended earlier this year.

Clause 1

This clause sets out the Bill's short title.

Clauses 2 and 3

This clause amends the definition section (section 4) of the Electoral Act by removing a driver's licence as one of the documents to be used as proof of identity for electoral purposes. Some driver's licences do not reflect citizenry on the face of them. In terms of the Constitution of Zimbabwe, one has to be a citizen in order to qualify as a voter. Accordingly, only valid passport or national identity will be required as proof of identity. This clause also includes a definition of the phrase "disqualifying offence". An offence of this nature is one for which a Member of Parliament is presently under the Constitution (section 129(1)(i)) required to vacate his or her seat. For the sake of consistency, it is proposed that persons who would be disqualified from continuing as MPs for committing such an offence should not also be allowed to stand as candidates for election.

Clauses 6 and 9

Guided by the principle that offenders who would be disqualified from continuing to sit in Parliament should not be admitted into Parliament, this clause will require every candidate to make a solemn declaration in a nomination form or by means of an attached affidavit, that he or she is not a convicted of a disqualifying offence (or has received a pardon for such offence).

Clauses 8 and 10

While the law is clear on the timeframe regarding withdrawal of candidature for a presidential election, it is however silent with regards to parliamentary and local authority elections. Section 107(1) of the Electoral Act provides that a presidential candidate can withdraw his or her candidature twenty-one (21) days before polling. In order to afford sufficient time for ZEC to make changes to the design of the ballot and to advise the electorate of any changes to the candidature of that election, these clauses seek to amend sections 49 and 126 of the Electoral Act so that they are aligned to section 107(1) of the principal Act.

Clauses 3, 4, 5, 6 and 11

The Constitution provides for the 30% female quota in respect of Councillors for local authorities and for there to be one youth elected to the National Assembly by indirect proportional representation for each province. To comply with the Constitution and the SADC Protocol on Gender and Development of 2008, these clauses seek to amend the appropriate sections of the Electoral Act accordingly.

BILL

To amend the Electoral Act [*Chapter 2:13*]; and to provide for matters connected with or incidental to the foregoing.

ENACTED by the Parliament and the President of Zimbabwe.

5 **1 Short title**

This Act may be cited as the Electoral Amendment Act, 2022.

2 Amendment of section 4 of Cap. 2:13

Section 4 (“Interpretation”)(1) of the principal Act is amended—

(a) by the insertion of the following definition—

10 ““disqualifying offence”, in relation to the disqualification of a candidate for election to the National Assembly or a local council, means convicted means any of the following offences of which the candidate is convicted within the period of twelve months (“the relevant period”) before the date of nomination as a candidate, that is, being found guilty—

- 15 (a) in Zimbabwe of an offence of which breach of trust, dishonesty or physical violence is an essential element; or
(b) outside Zimbabwe of conduct which, if committed in Zimbabwe, would be an offence of which breach of trust, dishonesty or physical violence is an essential element;

20 and being sentenced to imprisonment for six months or more without the option of a fine or without the option of any other non-custodial punishment, unless within the relevant period—

- 25 (i) the candidate has been pardoned for the offence; or
(ii) on appeal the candidate’s conviction is set aside or the sentence of imprisonment is reduced to less than six

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months or a punishment other than imprisonment is substituted;”;

- (b) by the repeal of the definition of “proof of identity” and the substitution of—

““proof of identity” means a valid Zimbabwe passport, or a notice or identity document issued in terms of section 7 of the National Registration Act [*Chapter 10:17*];”.

3 Amendment of section 45B of Cap. 2:13

Section 45B (“Interpretation in Part XIA”) of the principal Act is amended by the repeal of the definition of “party list seat” and the substitution of—

“party-list seat” means one of the seats in the Senate referred to in section 120(1)(a) of the Constitution or one of the seats in the National Assembly reserved for women or youths referred to in section 124(1)(b) or (c) of the Constitution, or one of the seats in a provincial council referred to in section 268(1) of the Constitution or any local council seat reserved for women councillors in conformity with section 277(4) of the Constitution;”.

4 Amendment of section 45C of Cap. 2:13

Section 45C (“Application of Part XIA, allocation of party-list seats and disqualification of votes for purposes of party-list elections”)(1) of the principal Act is amended—

- (a) by the repeal of subsection (4) and the substitution of—

“(4) Each electoral province—

- (a) shall be allocated six seats in the Senate and six seats reserved for women in the National Assembly; and
- (b) shall be allocated one seat reserved for youth members in the National Assembly, that is, persons aged from twenty-one to thirty-five years of age;
- (c) that is a non-metropolitan province shall be allocated ten seats in the provincial council for that electoral province.”;

- (b) by the insertion of the following subsections after subsection (5)—

“(6) For every electoral province there shall be elected by indirect proportional representation one youth member, that is, a person aged from twenty-one to thirty-five years of age.

(7) For every local authority (whether that local authority is a rural district council, city, municipal council, town council or local board) there shall be elected by indirect proportional representation the number of women party list councillors equal to the integer or nearest integer (any fraction of less than half being rounded downwards to the nearest integer and any fraction of a half or more being rounded upwards to the nearest integer) resulting from the application of the following formula to the local authority concerned—

$$\frac{30 \times \text{Number of wards in local authority concerned}}{100}$$

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(so that, for example, a local authority divided into nineteen wards will be represented by an additional six woman party list councillors, and a local authority divided into twenty-two wards will be represented by an additional seven woman party list councillors).

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(8) The formula prescribed in the Eighth Schedule for the election of party-list candidates is calculated on the basis of the total number of valid votes cast for all the candidates in the local authority concerned, excluding any valid votes cast for such candidates—

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- (a) not belonging to any political party; and
- (b) belonging to any political party which has opted not to field any party-list candidates for the local authority concerned.”.

5 Amendment of section 45D of Cap. 2:13

Section 45D (“Disqualifications for nominations as party-list candidate”)(1) of the principal Act is amended—

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- (a) by the insertion of the following paragraphs after paragraph (e)—
 - “(f) in the case of a party-list candidate for election as a youth member of the National Assembly, is also nominated as a candidate for election as a constituency member of the National Assembly, or as a member of a provincial council, or as a councillor.
 - (g) in the case of a party-list candidate for election as a member of a local authority, is also nominated as a party-list candidate for election as a Senator or as a candidate for election as a constituency or youth member of the National Assembly, or as a member of a provincial council.”;
- (b) in subsection (2) by the deletion of “(d) or (e)” and the substitution of “(d), (e), (f) or (g)”.

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6 Amendment of section 45E of Cap. 2:13

Section 45E (“Nomination of party-list candidates”) of the principal Act is amended—

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- (a) in subsection (1) by the repeal of paragraph (b) and the substitution of—
 - “(b) submit a nomination paper containing five party lists of the names of party-list candidates nominated by such party for the electoral province concerned, that is to say (in addition to the party lists referred to in paragraphs (c) and (d)), party-list candidates for the senatorial, National Assembly and provincial council seats allocated to that electoral province in terms of section 45C(4), each candidate being a person who, in the case of a party-list candidate for election to—
 - (i) the Senate, is eligible in terms of section 121(1)(a) of the Constitution for election to the Senate; or
 - (ii) the National Assembly, is eligible in terms of—

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- A. section 124(1)(b) of the Constitution for election to the National Assembly; and
- B. section 124(1)(c) of the Constitution for election to the National Assembly as a youth member;
- or 5
- (iii) the provincial council, is eligible in terms of section 268(2) of the Constitution for election to the provincial council;”;
- (b) by the insertion of the following paragraphs after paragraph (b)—
- “and
- (c) for the purpose of section 45C(6), submit a nomination paper containing a party list of the names of youths as party-list candidates for the National Assembly nominated by such party for every electoral province; and 10
- (d) for the purpose of section 45C(7), submit a nomination paper containing a party list of the names of party-list candidates nominated by such party for every local authority in which it intends to field two or more (non-party-list) candidates for direct election as councillors, each candidate being a woman who is eligible in terms of section 119(2) of this Act for election as a councillor;”;
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- (c) by the insertion of the following subsections after subsection (2)—
- “(2a) A nomination paper referred to in subsection (1)(c) shall be in the prescribed form and—
- (a) must state the name of the political party and the address of its main office in Zimbabwe; and 25
- (b) must state any abbreviation of the party’s name which the party may wish to appear on the ballot paper; and
- (c) may specify a distinctive symbol which the party wishes to appear on the ballot paper in conjunction with its name; and 30
- (d) shall—
- (i) list the names, addresses and national identity numbers of one female and one male youth party-list candidates for the electoral province covered by the nomination court concerned (one candidate being specified as the principal candidate and the other being his or her alternate); 35
- (ii) contain a declaration that no party-list candidate has been nominated in any other party list lodged with the nomination officer or any other nomination officer; 40
- and
- (e) bear the signature of each of the party-list candidates in the appropriate space, each signature being countersigned by the office-bearer; and
- (f) be accompanied by three recent passport-sized photographs of each of the party-list candidates, each of which must be affixed opposite the name of the party-list candidate to which it relates in the space provided in the prescribed form, or be marked on the back of the 45

photograph with the name or initials of the party-list candidate; and

(g) contain the contact particulars of each party-list candidate; and

5 (h) contain a sworn declaration signed by the office-bearer that he or she has checked all the particulars furnished in the nomination form in relation to both of the party-list candidates and that, to the best of his or her knowledge and belief, the particulars are true:

10 Provided that such a declaration does not relieve the nomination officer from ensuring that each nominee in a party-list nomination form is registered as a voter in the local authority in question and is otherwise eligible to be nominated; and

15 (i) contain such other particulars as may be prescribed; and

(j) be accompanied by the prescribed nomination fee in respect of each party-list candidate, which fee shall form part of the funds of the Commission.

20 (2b) A nomination paper referred to in subsection (1)(d) shall be in the prescribed form and—

(a) must state the name of the political party and the address of its main office in Zimbabwe; and

(b) must state any abbreviation of the party's name which the party may wish to appear on the ballot paper; and

25 (c) may specify a distinctive symbol which the party wishes to appear on the ballot paper in conjunction with its name; and

(d) shall—

30 (i) list the names, addresses and national identity numbers of—

A. the women party-list candidates for each local authority covered by the nomination court concerned, whose number in each local authority shall be equal to the number arrived at by applying to the local authority concerned the formula referred to in section 45C(7):

35 Provided that if a political party fails in respect of any local authority to furnish a list under this subparagraph, then all of the votes cast for its non-party list candidates in the local authority concerned shall be discounted from the tally of votes used in determining the indirect election of the party list candidates:

45 Provided further that if a political party furnishes a list containing fewer than the total number of party-list candidates than that determined by applying the formula referred to in section 45C(6), the provisions of Part VI of the Eighth Schedule will apply to it;

50 B. half as many party-list candidates again as the party listed under subparagraph A for the

- local authority concerned (or if an odd number of party list candidates is nominated under that subparagraph, an additional number of candidates equal to half the party so nominated plus an additional candidate), to fill in casual vacancies of party list councillors occurring in the local authority concerned, who must also be eligible in terms of section 119(2) of this Act for election as a councillor in the local authority concerned (so, for example, if the local authority concerned is divided into eleven wards, and the party is to contest every ward, it must additionally list the names, addresses and national identity numbers of at least six more party-list nominees nominated by the party);
- (ii) contain a declaration that no party-list candidate has been nominated in any other party list lodged with the nomination officer or any other nomination officer;
- and
- (e) shall bear the signature of each of the party-list candidates in the appropriate space, each signature being countersigned by the office-bearer; and
- (f) shall consist of women only in conformity with section 277(4) of the Constitution; and
- (g) shall be accompanied by three recent passport-sized photographs of each of the party-list candidates, each of which must be affixed opposite the name of the party-list candidate to which it relates in the space provided in the prescribed form, or be marked on the back of the photograph with the name or initials of the party-list candidate; and
- (h) shall contain the contact particulars of each party-list candidate; and
- (i) shall contain a sworn declaration signed by the office-bearer that he or she has checked all the particulars furnished in the nomination form in relation to every one of the party-list candidates and that, to the best of his or her knowledge and belief, the particulars are true:
- Provided that such a declaration does not relieve the nomination officer from ensuring that each nominee in a party-list nomination form is registered as a voter in the local authority in question and is otherwise eligible to be nominated; and
- (j) shall contain such other particulars as may be prescribed; and
- (k) shall be accompanied by the prescribed nomination fee in respect of each party-list candidate, which fee shall form part of the funds of the Commission.”;
- (d) in subsection (6) by the repeal of the proviso and the substitution of—
- “Provided that if less than—
- (i) six valid nominations of party-list candidates for the Senate; and
- (ii) six valid nominations of party-list women candidates for the National Assembly; and

- (iii) two valid nominations of party-list youth candidates for the National Assembly; and
- (iv) ten valid nominations of party-list candidates for a provincial council; and
- 5 (v) the number of valid nominations of party-list candidates for the local authority concerned;

remain after any deletions of names in terms of subsection (5)(b), the political party concerned must nominate additional party-list candidates to match the minimum number of valid nominations in each of the categories of party-list candidates referred to in paragraphs (i), (ii), 10 (iii) and (iv) of this proviso:

Provided further that if a political party fails to nominate additional party-list candidates to match the minimum number of valid nominations referred to in paragraph (iv) of the foregoing proviso, the nomination form referred to in subsection (i)(d) is still valid if it complies with subsection 15 (2b)(d)(i) A alone.”.

7 Amendment of section 46 of Cap. 2:13

Section 46 (“Withdrawal of candidate”) of the principal Act is amended—

- (a) in subsection (1) by the insertion of the following paragraph after 20 paragraph (e)—

“(e1) (if the nomination form contains no space for a solemn declaration by the candidate that he or she has not been convicted of a disqualifying offence, or, if so convicted, has been pardoned by the President or by virtue of an Act of Parliament) shall be 25 accompanied by an affidavit to the effect that he or she has not been convicted of a disqualifying offence (or, if so convicted, has been pardoned by the President or by virtue of an Act of Parliament); and”;

- (b) in subsection (15) by the insertion of the following paragraph after 30 paragraph (d)—

“(d1) he or she has been convicted of a disqualifying offence without being pardoned therefor; or”;

- (c) in subsection (20) by the insertion of the following paragraph after 35 paragraph (c)—

“or

- (d) being a candidate, makes a false declaration in a nomination paper or in an affidavit accompanying such nomination paper that he or she is has not been convicted of a disqualifying offence or has received a pardon therefor;”.

40 8 Amendment of section 49 of Cap. 2:13

Section 49 (“Withdrawal of candidate”) of the principal Act is amended—

- (a) by the repeal of subsections (1) and (2) and the substitution of—

“(1) Subject to this section, a duly nominated candidate for election for a constituency may withdraw, by notice in writing 45 addressed to the Chief Elections Officer, his or her candidature at any time before twenty-one days from the day or first day, as the case may be, on which the poll in an election for the constituency is to be taken.

(2) On receipt of a notice of withdrawal in terms of subsection (1), the Chief Elections Officer shall cause the withdrawal to be 50 published in the *Gazette* and in all newspapers of mass circulation in Zimbabwe.

9 Amendment of section 119 of Cap. 2:13

Section 119 (“Qualifications and disqualifications for election as councillor”)(2) of the principal Act is amended by the repeal of paragraph (e) and the substitution of—

“(e) he or she has been convicted of a disqualifying offence for which he or she has not received a pardon; or”.

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10 Amendment of section 126 of Cap. 2:13

Section 126 (“Withdrawal of candidate”) of the principal Act is amended by the repeal of subsection (1) and the substitution of—

“(1) Subject to this Act, a person who has been duly nominated as a candidate at an election may, at any time before twenty-one days from the day or first day, as the case may be, on which the poll in a local council election is to be taken, withdraw his or her candidacy by means of written notification to the Chief Elections Officer, signed by the candidate personally.”.

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11 Amendment of Eighth Schedule to Cap. 2:13

The principal Act is amended by the insertion in the Eighth Schedule of the following Part after Part IV—

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“PART V

NATIONAL ASSEMBLY YOUTH MEMBERS (EXAMPLE)

[The same principles as are applicable for the election of women party-list candidates to the National Assembly apply to the election of youth members of the National Assembly.]

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PART VI

LOCAL COUNCIL ELECTIONS (EXAMPLE)

1. In this Part, “participating party” means a political party that has nominated party-list candidates for a local authority. Paragraphs 2 to 8 assume a situation where all the participating parties have submitted nominations for the full number of the women party list seats available for allocation.

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2. The ward elections officer for the ward in the local authority concerned in which the greatest number of valid votes were cast in the election for that local authority shall be the returning officer for the purpose of this Part:

Provided that in the event of there being in the local authority concerned two or more wards in which the same number of valid votes were cast, which votes are greater than that cast for any other ward, the ward elections officers concerned shall draw lots to determine which of them shall be the returning officer for the purpose of this Part.

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3. The returning officer of a particular local authority shall, after determining the number of votes which have been cast for each of the candidates of the participating parties in the wards making up the local authority—

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- (a) ascertain the total number of votes cast for the participating parties; and
- (b) allocate in accordance with paragraph 4 to the participating parties, party-list seats in the local authority council .

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4. The number of seats to be allocated to women party-list candidates shall be the integer or nearest integer (any fraction of less than half being rounded downwards to the nearest integer and any fraction of a half or more being rounded upwards to the nearest integer) resulting from the application of the following formula to the local authority concerned—

$$\frac{30 \times \text{Number of wards in local authority concerned}}{100}$$

(The Commission shall, as soon as possible after an election proclamation is published, publish a notice in the *Gazette* specifying the number of women party-list seats in each local authority).

5. As soon as possible after the votes in a local authority election are counted, the returning officer shall determine a quota by dividing the total number of votes obtained by those participating parties for that local authority by the number of party-list seats determined in accordance with paragraph 4.

Example

If a local authority is divided into 22 wards, the number of party-list seats is seven (7).

If the number of valid votes cast for all participating parties is 8 954, the quota (rounding down or up to the nearest integer) is 1 279.

6. The returning officer shall determine the number of seats to be allocated to each participating party in two stages as follows—

- (a) in the first stage, each political party is allocated a seat for each number of votes that constitute the quota;
- (b) in the second stage, if after the allocation determined in terms of paragraph (a), the number of seats allocated to the participating parties is—
 - (i) less than the number of seats being contested by one seat, allocate that seat to the participating party with the greatest number of unallocated votes;
 - (ii) less than the number of seats being contested by two or more seats, allocate the seats to an equal number of participating parties determined in the order of the party having the greatest number of unallocated votes.

7. To determine the allocation of seats in local authority elections, the returning officer first establishes the parties' quotients in accordance with paragraph 5. He or she will have a table that looks like this [assuming that there are five parties contesting the local authority election and that they get the number of votes set out in the second column of the table]:

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<i>Parties</i>	<i>Number of votes</i>	<i>Quotients (votes divided by quota)</i>	<i>Seats allocated in 1st stage</i>	<i>Votes remaining</i>	<i>Seats allocated in the 2nd stage</i>
Party A	4 103	3,208	3	266	0
Party B	2 591	2,026	2	33	0
				<i>Unallocated votes</i>	
Party C	1 118	0,874	0	1 118	1
Party D	998	0,780	0	998	1
Party E	144	0,113	0	144	0
Totals:	8 954		5		2
Total seats allocated					7

Quota: 1 279 [i.e. the total number of votes divided by 7, which is the number of party-list seats being contested].

8. Next, if after the allocation of the seats from the division of the votes cast by the quota, less than six seats have been allocated, the returning officer will allocate the remaining seats to the parties with the greatest number of unallocated votes, as shown in the last column of the table.

9. If any political party—

- (a) fails to nominate any women for the party-list seats available for allocation in a particular local authority, all valid votes cast for it will not count towards determining the quota and its votes will not appear in the fifth column of the table below;
- (b) fails to nominate the full complement of women matching the number of the party-list seats available for allocation in a particular local authority, a portion of the valid votes cast for it will be discounted in determining the quota in accordance with the following formula:

$$\frac{A}{B} \times C$$

Where—

A = the number party list seats that the political party concerned failed to make nominations for; and

B = the number of the party-list seats available for allocation in a particular local authority; and

C = the number of valid votes cast for the political party concerned in the local authority election.

Example 1

If in the table above Party A submitted the full list of nominees, Party D submitted no nominees, and Parties B, C and E submitted lists with 3, 6 and 1 nominees respectively, the formula will be worked out as follows:

$$\frac{4}{7} \times 2\,591 = 1\,481 \text{ votes to be discounted (Party B)}$$

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$$\frac{1}{7} \times 998 = 119 \text{ votes to be discounted (Party C)}$$

$$\frac{6}{7} \times 144 = 130 \text{ votes to be discounted (Party E)}$$

If the number of valid votes cast for all participating parties is 8 954, minus 1 730 (7 224 valid votes remaining), minus Part D's 998 votes (6 226 valid votes remaining), the quota (rounding down or up to the nearest integer) is 889.

7. To determine in this scenario the allocation of seats in local authority elections, the returning officer first establishes the parties' quotients in accordance with paragraph 5. He or she will have a table that looks like this [assuming that there are five parties contesting the local authority election and that they get the number of votes set out in the second column of the table]:

<i>Parties</i>	<i>Number of votes</i>	<i>Quotients (votes divided by quota)</i>	<i>Seats allocated in 1st stage</i>	<i>Votes remaining</i>	<i>Seats allocated in the 2nd stage</i>
Party A	4 103	4,615	5	0	0
Party B	2 591	2,914	2 (nominally, it is entitled to 3 seats, but 5 having already been allocated, it gets only 2 seats out of the 3 for which it made nominations)	0	0
				<i>Unallocated votes</i>	
Party C	1 118	1,257	0 (nominally, it is entitled to 1 seat, but all 7 seats having already been allocated, it gets no seats)	0	0
Party D	998	0,780	0 (as in entry above)	0	0
Party E	144	0,620	0	0	0
Totals:	8 954		7		0
Total seats allocated					7

Quota: 889 [i.e. the total number of non-discounted votes divided by 7, which is the number of party-list seats being contested]

Example 2

If in the table above Party A submitted the full list of nominees, Party B submitted no nominees, and Parties C, D and E submitted lists with only 3, 6 and 1 nominees respectively, the formula will be worked out as follows:

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$$\frac{4}{7} \times 1\,118 = 671 \text{ votes to be discounted (Party C)}$$

$$\frac{1}{7} \times 998 = 100 \text{ votes to be discounted (Party D)}$$

$$\frac{6}{7} \times 144 = 130 \text{ votes to be discounted (Party E)}$$

If the number of valid votes cast for all participating parties is 8 954, minus 901 (8 053 valid votes remaining), minus Part B's 2 591 votes (5 462 valid votes remaining), the quota (rounding down or up to the nearest integer) is 780.

7. To determine in this scenario the allocation of seats in local authority elections, the returning officer first establishes the parties' quotients in accordance with paragraph 5. He or she will have a table that looks like this [assuming that there are five parties contesting the local authority election and that they get the number of votes set out in the second column of the table]:

<i>Parties</i>	<i>Number of votes</i>	<i>Quotient (votes divided by quota)</i>	<i>Seats allocated in 1st stage</i>	<i>Votes remaining</i>	<i>Seats allocated in the 2nd stage</i>
Party A	4 103	5,260	5	203	0
Party B	2 591	3,322	0 (not entitled to any seats)	0	0
				<i>Unallocated votes</i>	
Party C	1 118	1,433	1	338	0
Party D	998	1,280	1	218	0
Party E	144	0,620	0	0	0
Totals:	8 954		7		0
Total seats allocated					7

Quota: 780 [i.e. the total number of non-discounted votes divided by 7, which is the number of party-list seats being contested]