

**SPECIAL ISSUE**

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REPUBLIC OF KENYA

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***KENYA GAZETTE SUPPLEMENT***

**ACTS, 2016**

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**THE ELECTION LAWS (AMENDMENT) ACT****No. 36 of 2016***Date of Assent: 13th September, 2016**Date of Commencement: 4th October, 2016***AN ACT of Parliament to amend various laws relating to elections and for connected purposes****ENACTED** by the Parliament of Kenya, as follows—

**1.** This Act may be cited as the Election Laws (Amendment) Act, 2016.

Short title.

**2.** Section 2 of the Elections Act, 2011 is amended—

Amendment of section 2 of No. 24 of 2011.

- (a) in the definition of “county” by inserting the words “one of” immediately after the word “means”;
- (b) in the definition of “election court” by deleting the word “and” appearing immediately after the words “of the Constitution” and substituting therefor the word “or”;
- (c) in the definition of “nomination day” by inserting the words “at least sixty days before an election” immediately after the words “day gazetted”;
- (d) in the definition of “Principal Register of Voters” by deleting the expression “Principal Register of Voters” and substituting therefor the expression “Register of Voters”;
- (e) inserting the following new definitions in their proper alphabetical sequence—

“biometric” means unique identifiers or attributes including fingerprints, hand geometry, earlobe geometry, retina and iris patterns, voice waves, DNA, and signatures; and

“integrated electronic electoral system” refers to a system that includes biometric voter registration, biometric voter identification and electronic result transmission system.

**3.** Section 5 of the Elections Act, 2011 is amended by—

Amendment of section 5 of No. 24 of 2011.

- (a) deleting subsection (3A); and
- (b) deleting subsection (3B).

**4.** Section 6 of the Elections Act, 2011 is amended by—

Amendment of section 6 of No. 24 of 2011.

(a) deleting subsection (2) and substituting therefor the following new subsection—

(2) The Commission shall, for purposes of subsection (1), maintain a public web portal for inspection of the register of members of the public.

(b) deleting subsection (3).

**5.** The Elections Act, 2011 is amended by inserting the following new section immediately after section 6—

Insertion of new section 6A in No. 24 of 2011.

Verification of biometric data.

**6A.** (1) The Commission shall, not later than ninety days before the date of a general election, open the Register of Voters for verification of biometric data by members of the public at their respective polling stations for a period of thirty days.

(2) The Commission shall, upon the expiry of the period for verification under subsection (1), revise the Register of Voters to take into account any changes in particulars arising out of the verification process.

(3) The Commission shall, upon expiry of the period for verification specified under subsection (1) publish—

(a) a notice in the *Gazette* to the effect that the revision under subsection (2) has been completed; and

(b) the Register of Voters online and in such other manner as may be prescribed by regulations.

**6.** The Elections Act, 2011 is amended by inserting the following new section immediately after section 8—

Insertion of new section 8A in No. 24 of 2011.

Audit of the register of voters.

**8A.** (1) The Commission may, at least six months before a general election, engage a professional reputable firm to conduct an audit of the Register of Voters for the purpose of—

- (a) verifying the accuracy of the Register;
- (b) recommending mechanisms of enhancing the accuracy of the Register; and
- (c) updating the register.

No. 3 of 2011.

(2) The Kenya Citizens and Foreign Nationals Management Service established under section 3 of the Kenya Citizens and Foreign Nationals Management Service Act shall make available to the Commission the information held by it in the national population register for the purpose of the conduct of an audit under subsection (1).

(3) For purposes of the first general election after the commencement of this section, the Commission shall, within thirty days of the commencement of this section, engage a professional reputable firm to conduct an audit of the Register of Voters for the purpose of—

- (a) verifying the accuracy of the Register;
- (b) recommending mechanisms of enhancing the accuracy of the Register; and
- (c) updating the register.

(4) The firm engaged under subsection (3) shall conduct the audit and report to the Commission within a period of thirty days from the date of engagement.

(5) The Commission shall, within fourteen days of receipt of the report under subsection (4), submit the report to the National Assembly and the Senate.

(6) The Commission shall implement the recommendations of the audit report within a period of thirty days of receipt of the report and submit its report to the National Assembly and the Senate.

**7.** Section 10 of the Elections Act, 2011 is amended in subsection (1) by deleting the word “is” and substituting therefor the words “and biometric data are”.

Amendment of section 10 of No. 24 of 2011.

**8.** Section 13 of the Elections Act, 2011 is amended in subsection (1) by deleting the words “forty-five” appearing immediately after the words “at least” and substituting therefor the word “sixty”.

Amendment of section 13 of No. 24 of 2011.

**9.** Section 28 of the Elections Act, 2011 is amended by deleting the words “forty-five” appearing immediately after the words “at least” and substituting therefor the word “ninety”.

Amendment of section 28 of No. 24 of 2011.

**10.** Section 31 of the Elections Act, 2011 is amended by—

Amendment of section 31 of No. 24 of 2011.

- (a) deleting subsection (2) and substituting therefor the following subsection—

(2) The Commission shall, upon the request of a political party, conduct and supervise the nomination of candidates by the political party for presidential, parliamentary or county elections in accordance with Article 88 of the Constitution.

- (b) inserting the following new subsections immediately after subsection (2)—

(2A) Every political party shall submit the names of the party candidates who have been selected to participate in the general elections under this Act at least sixty days before the elections.

(2B) A political party shall, at least twenty-one days before the nomination day, submit to the Commission the names of the persons contesting in its party primary and the date of its party primary.

(2C) The Commission shall publish, in the *Gazette* the names of the persons contesting in a party primary under subsection (1) and the date of the party primary within seven days of receipt of the names of party candidates.

(2D) A candidate for a presidential, parliamentary or county election shall be selected

by persons who are members of the respective political parties and whose names appear on the party membership list as submitted to the Commission under section 28.

**11.** Section 33 of the Elections Act, 2011 is amended by—

Amendment of section 33 of No. 24 of 2011.

(a) renumbering the existing provision as subsection (1);

(b) in subsection (1) by—

(i) deleting paragraph (b) and substituting therefor the following new paragraph—

(b) has submitted to the Commission, at least sixty days before a general election, a duly filled nomination paper in such form as may be prescribed by the Commission;

(ii) deleting paragraph (c) and substituting therefor the following new paragraph—

(b) has, at least ninety days before the date of a general election or at least twenty one days before the date appointed by the Commission as the nomination day for a by-election, submitted to the Commission the name that the person intends to use during the election.

(2) inserting the following new subsection immediately after subsection (1)—

(2)The Commission shall publish in the *Gazette*, the names of persons intending to contest in the election as independent candidates at least fourteen days before the nomination day.

**12.** The Elections Act, 2011 is amended by deleting section 35 and substituting therefor the following section—

Amendment of section 35 in No. 24 of 2011.

Submission of party lists.

**35.** A political party shall submit its party list to the Commission at least forty-five days before the date of the general election.

**13.** The Elections Act, 2011 is amended by inserting the following new section immediately after section 38—

Insertion of new section 38A in No. 24 of 2011.

Number of voters per  
polling station.

**38A.** For the efficient and effective conduct of elections, the Commission shall determine the number of voters per polling station but such number shall not exceed five hundred voters.

**14.** Section 39 of the Elections Act, 2011 is amended by inserting the following new sub-sections immediately after subsection (1)—

Amendment of  
section 38 of No. 24  
of 2011.

(1A) The Commission shall appoint constituency returning officers to be responsible for—

- (i) tallying, announcement and declaration, in the prescribed form, of the final results from each polling station in a constituency for the election of a member of the National Assembly and members of the county assembly;
- (ii) collating and announcing the results from each polling station in the constituency for the election of the President, county Governor, Senator and county women representative to the National Assembly; and
- (iii) submitting, in the prescribed form, the collated results for the election of the President to the national tallying centre and the collated results for the election of the county Governor, Senator and county women representative to the National Assembly to the respective county returning officer.

(1B) The Commission shall appoint county returning officers to be responsible for tallying, announcement and declaration, in the prescribed form, of final results from constituencies in the county for purposes of the election of the county Governor, Senator and county women representative to the National Assembly.

(1C) For purposes of a presidential election the Commission shall—

- (a) electronically transmit, in the prescribed form, the tabulated results of an election



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for the President from a polling station to the constituency tallying centre and to the national tallying centre;

- (b) tally and verify the results received at the national tallying centre; and
- (c) publish the polling result forms on an online public portal maintained by the Commission.

(1D) The chairperson of the Commission shall declare the results of the election of the President in accordance with Article 138(10) of the Constitution.

**15.** Section 40 of the Elections Act, 2011 is amended by—

Amendment of section 40 of No. 24 of 2011.

- (a) renumbering the existing provision as subsection (1); and
- (b) inserting the following new subsection immediately after subsection (1)—

(2) The mechanisms under subsection (1) shall include provision for partnership with other agencies and non-state actors in the provision of voter education.

**16.** Section 43 of the Elections Act, 2011 is amended—

Amendment of section 43 in No. 24 of 2011.

- (a) by deleting subsections (1), (2), (3) and (4); and
- (b) in subsection (6), by deleting paragraph (b).

**17.** The Elections Act, 2011 is amended by deleting section 44 and substituting therefor the following new section—

Amendment of section 44 of No. 24 of 2011.

Use of technology.

**44.** (1) Subject to this section, there is established an integrated electronic electoral system that enables biometric voter registration, electronic voter identification and electronic transmission of results.

(2) The Commission shall, for purposes of subsection(1), develop a policy on the progressive use of technology in the electoral process.

(3) The Commission shall ensure that the technology in use under subsection (1) is simple, accurate, verifiable, secure, accountable and transparent.

(4) The Commission shall, in an open and transparent manner—

(a) procure and put in place the technology necessary for the conduct of a general election at least eight months before such elections; and

(b) test, verify and deploy such technology at least sixty days before a general election.

(5) The Commission shall, for purposes of this section and in consultation with relevant agencies, institutions and stakeholders, including political parties, make regulations for the implementation of this section and in particular, regulations providing for—

(a) the transparent acquisition and disposal of information and communication technology assets and systems;

(b) testing and certification of the system;

(c) mechanisms for the conduct of a system audit;

(d) data storage and information security;

(e) data retention and disposal;

(f) access to electoral system software source codes;

(g) capacity building of staff of the Commission and relevant stakeholders on the use of technology in the electoral process;

- (h) telecommunication network for voter validation and result transmission;
- (i) development, publication and implementation of a disaster recovery and operations continuity plan; and
- (j) the operations of the technical committee established under subsection (7).

(6) Notwithstanding the provisions of section 109(3) and (4), the Commission shall prepare and submit to Parliament, the regulations required made under subsection (4) within a period of thirty days from the date of commencement of this section.

(7) The technology used for the purpose of the first general elections upon the commencement of this section shall –

- (a) be restricted to the process of voter registration, identification of voters and results transmission; and
- (b) be procured at least eight months before the general election.

(8) For the purposes of giving effect to this section, the Commission shall establish a technical committee of the Commission consisting of such members and officers of the Commission and such other relevant agencies, institutions or stakeholders as the Commission may consider necessary to oversee the adoption of technology in the electoral process and implement the use of such technology.

**18.** The Elections Act, 2011 is amended by inserting the following new sections immediately after section 55–

Maintenance of secrecy at elections.

**55A.** (1) Every elections officer, candidate or agent authorized to take part in any proceedings relating to the issue or

Insertion of new section 55A, 55B and 55C in No. 24 of 2011.

receipt of ballot papers or to attend at a polling station or at the counting of the votes shall, before so attending, make an oath of secrecy prescribed in the Third Schedule.

(2) Every officer, candidate or agent in attendance at a polling station shall—

- (a) maintain and aid in maintaining the secrecy of the ballot; and
- (b) not communicate, except for a purpose authorized by law before the poll is closed, any information as to the name or number on the register of voters, of any voter who has or has not applied for a ballot paper or voted at that station or as to the official mark.

(3) A presiding officer may, upon request, divulge to a candidate or to the agent of a candidate the total number of voters who have voted in the station at any time before the poll is closed.

Postponement of elections by the Commission.

**55B** (1) The Commission may, where a date has been appointed for holding an election, postpone the election in a constituency, county or ward for such period as it may consider necessary where—

- (a) there is reason to believe that a serious breach of peace is likely to occur if the election is held on that date;
- (b) it is impossible to conduct the elections as a result of a natural disaster or other emergencies,
- (c) that there has been occurrence of an electoral malpractice of such a nature and gravity as to make it impossible for an election to proceed.

(2) Where an election is postponed under subsection (1), the election shall be held at the earliest practicable time.

(3) Notwithstanding the provisions of this section, the Commission may, if satisfied that the result of the elections will not be affected by voting in the area in respect of which substituted dates have been appointed, direct that a return of the elections be made.

**19.** Section 76 of the Elections Act, 2011 is amended—

Amendment of section 76 of No. 24 of 2011.

- (a) in subsection (1)(a) by deleting the words “publication of the results of the election in the *Gazette*” appearing immediately after the words “date of” and substituting therefor the word “declaration of the results of the election”; and
- (b) in subsection (1)(c) by inserting the words “or a county assembly” immediately after the word “Parliament”.

**20.** Section 85A of the Elections Act, 2011 is amended by—

Amendment of section 85A of No. 24 of 2011.

- (a) renumbering the existing provision as subsection (1);
- (b) inserting the following new subsection—

(2) An appeal under subsection (1) shall act as a stay of the certificate of the election court certifying the results of an election until the appeal is heard and determined.

**21.** The Elections Act is amended by deleting section 87 and substituting therefor the following new section—

Amendment of section 87 of No. 24 of 2011.

Report of Court on electoral malpractices.

**87.** (1) An election court may, at the conclusion of the hearing of a petition, in addition to any other orders, make a determination on whether an electoral malpractice of a criminal nature may have occurred.

(2) Where the election court determines that an electoral malpractice of a criminal nature may have occurred, the court shall

direct that the order be transmitted to the Director of Public Prosecutions.

(3) Upon receipt of the order under subsection (2), the Director of Public Prosecutions shall—

- (a) direct an investigation to be carried out by such State agency as it considers appropriate; and
- (b) based on the outcome of the investigations, commence prosecution or close the matter.

**22.** The Elections Act is amended by deleting section 104 and substituting therefor the following new section—

Replacement of section 104 in No. 24 of 2011.

Facilitation of persons with special needs including persons with disabilities.

**104.** The Commission shall, for the purpose of ensuring that persons with special needs including persons with disabilities realise their right to vote—

- (a) put in place appropriate infrastructure including special voting booths; and
- (b) have in each polling station such officers as the Commission considers necessary to facilitate voting.

**23.** The Elections Act, 2011 is amended by deleting section 106.

Amendment of section 106 of No. 24 of 2011.

**24.** Section 109 of the Elections Act is amended in subsection (1) by inserting the word “prisoner” immediately after the word “citizens living abroad” appearing in paragraph (b).

Amendment of section 109 of No. 24 of 2011.

**25.** Section 110 of the Elections Act, 2011 is amended by—

Amendment of section 110 of No. 24 of 2011.

- (a) deleting subsection (3);
- (b) deleting subsection (4); and
- (c) deleting subsection (6) .

**26.** The Elections Act, 2011 is amended by deleting the expression “Principal Register of Voters” wherever it appears and substituting therefor the expression “Register of Voters”.

General amendment to Act No. 24 of 2011.

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27. The Elections Act, 2011 is amended by inserting the following new schedule immediately after the Second Schedule—

Insertion of new Schedule.

**THIRD SCHEDULE (s. 55A)**

**OATH OF SECRECY**

I, .....  
I.D./Passport No. ....  
swear that I shall maintain the secrecy of the ballot and shall not communicate, except for a purpose authorized by law before the poll is closed, any information as to the name or number on the register of voters, of any voter who has or has not applied for a ballot paper or voted at that station or as to the official mark with respect to the ..... constituency/county/ward or do anything that compromises the secrecy of the vote.

.....  
Signature of person taking the oath

Before me

.....  
(Signature)

Commissioner for Oaths/Magistrate

Date: .....

28. Section 25 of the Political Parties Act is amended in subsection (1) by deleting paragraph (a) and substituting therefor the following new paragraphs—

Amendment of section 25 of No. 11 of 2011.

(a) eighty per cent of the Fund proportionately by reference to the total number of votes secured by each political party in the preceding general election;

(aa) fifteen per cent of the Fund proportionately to political parties qualifying under paragraph (a) based on the number of candidates of the party from special interest groups elected in the preceding general election ; and

29. Section 3 of the Independent Electoral and Boundaries Commission Act, 2011 is amended in paragraph (b) by deleting the expression “12(b)” appearing immediately after the words “pursuant to Article” and substituting therefor the expression “88(1), (2) and (3)”.

Amendment of section 3 of No. 9 of 2011.

**30.** Section 4 of the Independent Electoral and Boundaries Commission Act, is amended in subsection (1) by deleting paragraph (l).

Amendment of section 4 of No. 9 of 2011.

**31.** The Independent Electoral and Boundaries Commission Act, 2011 is amended by deleting section 5 and substituting therefor the following section—

Amendment of section 5 of No. 9 of 2011

Composition and appointment of the Commission

**5.** (1) The Commission shall consist of a chairperson and six other members appointed in accordance with Article 250(4) of the Constitution and the provisions of this Act.

(2) The chairperson and members of the Commission shall be appointed in accordance with the procedure set out in the First Schedule.

(3) The process of replacement of a chairperson or a member of the Commission shall commence at least six months before the lapse of the term of the chairperson or member of the Commission.

(4) The procedure set out in the First Schedule shall apply, with the necessary modifications, whenever there is a vacancy in the Commission

**32.** Section 6 of the Independent Electoral and Boundaries Commission Act, 2011 is amended in subsection (2) by deleting paragraph (a).

Amendment of section 6 of No. 9 of 2011

**33.** The Independent Electoral and Boundaries Commission Act, 2011 is amended by inserting the following new section immediately after section 7—

Insertion of section 7A in No.9 of 2011.

Vacancy in the office of chairperson and members

**7A.** (1) The office of the chairperson or a member of the Commission shall become vacant if the holder—

- (a) dies;
- (b) resigns from office by notice in writing addressed to the President; or
- (c) is removed from office under any of the circumstances specified in Article 251 and Chapter Six of the Constitution.



(2) The President shall publish a notice of a vacancy in the *Gazette* within seven days of the occurrence of such vacancy.

(3) Whenever a vacancy arises under subsection (1), the recruitment of a new chairperson or member, under this Act, shall commence immediately after the declaration of the vacancy by the President under subsection (2).

**34.** The Independent Electoral and Boundaries Commission Act, 2011 is amended by inserting the following new section immediately after section 10—

Amendment of section 10 of No. 9 of 2011.

Vacancy of office of secretary

**10A.** (1) The office of the secretary shall become vacant if the holder—

- (a) dies;
- (b) resigns from office by notice in writing addressed to the Commission; or
- (c) is removed from office under any of the circumstances set out under section 10.

**35.** The Independent Electoral and Boundaries Commission Act, 2011 is amended by inserting the following new section immediately after section 11—

Insertion of new section 11A of No. 9 of 2011.

Relationship between the Commissioners and Secretariat.

**11A.** For the effective performance of the functions of the Commission—

- (a) the chairperson and members of the Commission shall perform their functions in accordance with the Constitution and in particular, shall be responsible for the formulation of policy and strategy of the Commission and oversight; and
- (b) the secretariat shall perform the day-to-day administrative functions of the Commission and implement the policies and strategies formulated by the Commission.

**36.** Section 24 of the Independent Electoral and Boundaries Commission Act, 2011 is amended in subsection (2) by inserting the following new paragraphs immediately after paragraph (b)—

Amendment of section 24 of No. 9 of 2011.

- (ba) progress made in the continuous registration of citizens as voters and the progressive realisation of the right to vote of citizens residing outside Kenya and prisoners;

**37.** Section 31 of the Independent Electoral and Boundaries Commission Act, 2011 is amended in subsection (2) by deleting paragraph (e).

Amendment of section 31 of No. 9 of 2011.

**38.** The Independent Electoral and Boundaries Commission Act, 2011 is amended by deleting the First Schedule and substituting therefor the following new Schedule:

Amendment of the First Schedule No. 9 of 2011.

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**FIRST SCHEDULE**

(S. 5)

**PROCEDURE FOR APPOINTMENT OF CHAIRPERSON AND MEMBERS OF THE COMMISSION**

Selection panel

1. (1) At least six months before the lapse of the term of the chairperson or member of the Commission or within fourteen days of the declaration of a vacancy in the office of the chairperson or member of the Commission under the Constitution or this Act, the President shall appoint a selection panel consisting of such persons as Parliament shall determine for the purposes of appointment of the chairperson or member of the Commission.
- (2) For the purpose of the first appointment of commissioners upon the commencement of section 5, the selection panel shall consist of –
  - (a) four persons, being two men and two women, nominated by the Parliamentary Service Commission;

- (b) one person nominated by the Kenya Conference of Catholic Bishops;
  - (c) one person nominated by the National Council of Churches of Kenya;
  - (d) one person nominated by the Supreme Council of Kenya Muslims, the National Muslim Leaders Forum and the Council of Imams and Preachers of Kenya;
  - (e) one person nominated by the Evangelical Alliance of Kenya; and
  - (f) one person nominated by the Hindu Council of Kenya.
- (3) The respective nominating bodies under sub-paragraphs (2)(b) to (f) shall submit the names of their nominees to the Parliamentary Service Commission for transmission to the President for appointment.
- (4) The selection panel shall, at its first sitting, elect a chairperson and vice-chairperson from amongst its number.
- (5) Subject to the provisions of this Schedule, the selection panel shall determine its own procedure.
- (6) The Parliamentary Service Commission shall provide the secretariat services and facilities required by the selection panel in the performance of its functions.
- Oath or affirmation of office
2. The chairperson and members of the selection panel shall, before assuming office, take and subscribe the oath or affirmation of office prescribed in the Third Schedule.

Selection of  
nominees

3. (1) The selection panel shall, within seven days of its appointment, invite applications from qualified persons and publish the names of all applicants and their qualifications in the *Gazette*, two newspapers of national circulation and on the website of the Parliamentary Service Commission.
- (2) The selection panel shall consider the applications, shortlist and interview the applicants.
- (3) The interviews under subparagraph (2) shall be conducted in public.
- (4) After conducting interviews under subparagraph (2), the selection panel shall select two persons qualified to be appointed as chairperson and nine persons qualified to be appointed as members of the Commission and shall forward the names to the President for nomination of one person for appointment as the chairperson and six persons for appointment as members.
- (5) The President shall, within seven days of receipt of the names under subparagraph (4), forward the list of nominees to the National Assembly for approval in accordance with the Public Appointments (Parliamentary Approval) Act.

Appointment by  
the President.

4. The President shall, within seven days of receipt of the names approved by the National Assembly, by notice in the *Gazette*, appoint the Chairperson and the members of the Commission.

Gender equity  
and regional  
balance.

5. In short listing, nominating or appointing persons as chairperson and members of the Commission, the selection panel, the National Assembly and the President shall ensure that not more than two-thirds of the members are of the same gender and shall ensure regional balance.

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Dissolution of  
Selection Panel

6. The selection panel shall stand dissolved upon the requisite appointments being made under paragraph 4.

**39.** Section 12 of the Supreme Court Act is amended—

Amendment of  
section 12 of No. 7  
of 2011.

- (a) by renumbering the existing provision as subsection (1);
- (b) by inserting the following new subsection immediately after subsection (1)—

(2) The Independent Electoral and Boundaries Commission shall, within a period of forty-eight hours from the date of the service of a presidential election petition, submit to the Supreme Court certified copies of the documents used to declare the results of the presidential election, including the forms used to announce the results of the election at the polling station and the constituency tallying centre and to declare the result at the national tallying centre.

**40.** Section 9 of the Registration of Persons Act is amended—

Amendment of  
section 9 of Cap.  
107.

- (a) in subsection (1) by inserting the words “within a period of thirty days from the date of registration” immediately after the words “registration officer shall”;
- (b) in subsection (6) by inserting the words “within a period of fourteen days from the date of payment of the fees” immediately after the words “a new identity card”.

**41.** Section 16 of the Registration of Persons Act is amended by inserting the following new paragraph immediately after paragraph (b)—

Amendment of  
section 16 of Cap.  
107.

- (ba) providing simple guidelines for the vetting of applicants prior to the issuance or replacement of an identity card;