



SUCCEEDING PRESIDENT



NI-PP

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I. Overview

In this note, the term ‘Succeeding President’ refers to an instance where the incumbent President vacates his office prior to the completion of the 5-year term and a new President is elected by Parliament. This note will explore the Constitutional provisions (articles) governing such situation and the applicable provisions of the Presidential Elections (Special Provisions) 2 of 1981 (section). It will also examine the Parliamentary procedures that will be initiated during such a situation vis-à-vis Standing Orders.

II. Vacation of office by the President

Once a President is elected via a Presidential election¹ (this is the process by which the people elect the President in a poll), such person holds office for a period of five years², and will automatically cease functioning at the expiration of such period. Such an election by people to elect the President can only be held at the expiration of the 5-year period³ and not prior⁴. Then a question arises as to what happens when an incumbent President vacates his office prior to the expiration of his 5-year term, i.e., an election by people cannot be effectuated. Prior to exploring such an issue, it is pertinent to examine what would occasion such a premature vacation of post by an incumbent President. It is contained in Article 38 which delineates such instances:

1. Supreme Court declares the Presidential Election is void⁵
2. Immediately after the election of the incumbent President, he/she fails to take the Oath as the President within two weeks of such election⁶
3. Death of incumbent President⁷

¹ See Article 31

² Article 30(2)

³ Article 31(3)

⁴ Except instance described in Article 31(3A)

⁵ Article 38(1)(f)

⁶ Article 38(1)(d)

⁷ Article 38(1)(a)

4. Incumbent President ceases to be a Sri Lanka citizen⁸
5. Resignation by the incumbent President⁹
6. Incumbent President is impeached by Parliament¹⁰

In any one of these instances, the office of President can be vacated prior to the completion of the 5-year term. How then, without the availability for an election by people, can a succeeding President be elected?

III. President by Parliament.

Article 40(1)(a) delineates that if the office of President becomes vacant prior to the expiration of the 5-year term, “*Parliament shall elect as President one of its Members who is qualified to be elected to the office of President*”¹¹. For the purpose of this note, such election will be termed as ‘President by Parliament’ and the person so elected will be referred to as ‘Succeeding President’. A ‘Succeeding President’ will hold office as President for the remainder of his predecessor’s term.

However, the procedures of ‘President by Parliament’ will not be applicable in the event the Supreme Court declares the Presidential election as void¹². While the law does not provide an explicit reason for such an exception,¹³ it is evident that out of the 6 instances whereby a President may vacate his office prior to the completion of his term (Article 38 above), only 5 cases will trigger the processes of President by Parliament.

⁸ Article 38(1)(c)

⁹ Article 38(1)(b)

¹⁰ Article 38(1)

¹¹ *see also* section 3 Act, No. 2 of 1981

¹² *ibid.*

¹³ It is highly unlikely that a declaration by the Supreme Court will be made well into the term of an incumbent President. Rather such a declaration will be made at the outset of the Presidential election and as such a fresh poll will be held as opposed to triggering a President by Parliament. In such an instance it is most likely that the provisions of Article 31(c) will be applicable

IV. Procedure for a ‘President by Parliament’

A. Matters relating to President by Parliament

The Constitution recognises the legislature’s power to provide for all matters relating to the operation of ‘President by Parliament’¹⁴. Standing Order No. 7¹⁵ expressly stipulates the Presidential Elections (Special Provisions) Act, No. 2 of 1981 is applicable in this instance. Apart from delineating the processes to be followed on the date of the election, the said Act provides a mechanism for petitioning against the results of the election to the Supreme Court¹⁶, punishment and incapacities for undue influence and bribery¹⁷ and the procedure to be followed when the vacation of the office of President is occasioned after the dissolution of Parliament.¹⁸

B. Summoning the Parliament

A prerequisite for the initiation of ‘President by Parliament’ is the summoning of Parliament. As per Article 70 the power to summon Parliament vests with the President. A question then arises as to how the Parliament may be summoned in the event the office of the President has been vacated. The answer is provided for in Presidential Elections (Special Provisions) Act, No. 2 of 1981, wherein it stipulates that *“The occurrence of a vacancy in the office of President shall, when Parliament has not been dissolved, operate as a summoning of Parliament to meet within three days of such occurrence.”*¹⁹

C. Designated time frame

The Constitution explicitly delineates the timeframe within which the ‘President by Parliament’ be initiated reflecting the urgency with which such a process ought to be concluded. When the requirement arises for a ‘President by Parliament, the Constitution stipulates that such election must be held no

¹⁴ Articles 40(1)(b), 40(3) of the Constitution

¹⁵ Standing Orders of Parliament

¹⁶ Sections 19, 22, 23, 24, 25 of Presidential Elections (Special Provisions) Act, No. 2 of 1981

¹⁷ Ibid Section 20

¹⁸ Ibid Section 14 – 16

¹⁹ Ibid Sections 3, 4

later than one month from the date of the vacation of post by the incumbent President²⁰. The Constitution stipulates the succeeding President to be elected “*as soon as possible*”²¹.

D. Receipt of Nominations

- A member addressing the Secretary General shall propose some other member presenting Parliament to the office of President.²²
- The proposal shall be seconded by another member.²³
- If only one member be proposed and seconded to the office of President, he shall be declared by the Secretary General to have been elected to the office of President, on the same day of the receipt of nomination.²⁴
- If more than one member be so proposed and seconded, Parliament shall fix a date and time for the holding of the election.²⁵

E. Modality of election

The election is to be held via a “*secret ballot and by an absolute majority of the votes cast in accordance with the procedure as Parliament may by law provide*”²⁶. Absolute majority refers to more than one half of the valid votes cast.

The procedure to adopt in the event no candidate has received an absolute majority or there exist an equality of votes, is contained in Section 12 and 13 of the Presidential Elections (Special Provisions) Act, No. 2 of 1981 respectively.

²⁰ Article 40(1)(b) of the Constitution

²¹ *ibid.*

²² Section 6(3) of Presidential Elections (Special Provisions) Act, No. 2 of 1981

²³ *ibid.*

²⁴ Section 6(4) of Presidential Elections (Special Provisions) Act, No. 2 of 1981

²⁵ *ibid.*

²⁶ Article 40(1)(b) of the Constitution

i. Role of the Secretary General of Parliament

1. Inform the members of Parliament of the summoning of Parliament²⁷
2. Fix a date and time²⁸ to receive nomination for candidates for the 'President by Parliament'²⁹
3. Act as the 'returning officer' on the date fixed to hold the election for 'President by Parliament'³⁰
 - a. Show the empty ballot box/boxes to members. Thereafter seal it³¹
 - b. At the commencement of voting, call out the name of each member including Speaker to receive a ballot paper³²
 - c. The returning officer shall initial the back of the ballot paper with his initials in the presence of the member.
 - d. Before voting is due to end, the Secretary General of Parliament calls out the name of members a second time if they fail to present themselves at the initial calling. If failed to appear a second time, such member will deemed to have abstained from voting.³³
 - e. Give a second ballot paper in the event a member spoils his ballot by way of inadvertence³⁴
 - f. Count the votes as per the marked ballot papers.³⁵
 - g. Declare the candidate with an absolute majority³⁶

²⁷ Section 4 of Act, No. 2 of 1981

²⁸ The date and time so fixed must not be earlier than 48 hours and not later than 7 days from the date of the summoning.

²⁹ Section 5 of Act, No. 2 of 1981

³⁰ Ibid Section 7(1) 1

³¹ Ibid Section 7(2)

³² Ibid Section 7(3)

³³ Ibid Section 7(8)

³⁴ Ibid Section 7(7)

³⁵ Ibid Sections 10, 12 and 13

³⁶ Ibid Section 11

h. Cause the publication in Gazette (within 3 days of the election) the candidate declared to have been elected³⁷

i. After a member has been declared elected as President the ballot papers shall be placed in a box and retained in his custody for six months and cause such ballot papers to be destroyed and notify Parliament subject to any direction, he may receive from Parliament³⁸.

ii. Role of the member of Parliament

1. Once the ballot paper is received, to proceed to the cubicle provided and mark the ballot³⁹

2. Once marked, fold the ballot paper, and cast it into the ballot box and return to the returning officer's table⁴⁰

iii. Manner of Voting.

1. Member shall place on his ballot paper the **figure 1** in the square opposite the name of the candidate for whom he votes⁴¹

2. If there are more than 2 candidates in addition to his 1st preference, he may place on his ballot paper the figures 2, 3 and 4, and so on, in the squares opposite the names of the candidates in the order of his preferences.

³⁷ Ibid Section 17

³⁸ Ibid Section 18

³⁹ Ibid Section 7(4)

⁴⁰ Ibid Section 7(6), *see also* Section 8

⁴¹ Ibid Section 8

iv. *Specimen of Ballot Paper*

Name of the Candidate	Preference
Candidate 1	
Candidate 2	
Candidate 3	
Candidate 4	

v. *A ballot paper shall be invalid*⁴²

- (a) on which anything is written or marked, by which the member can be identified; or
- (b) which does not bear the returning officer's initials; or
- (c) on which the figure 1 is not marked; or
- (d) on which the figure 1 is marked opposite the name of more than one candidate; or
- (e) which is unmarked or void for uncertainty.

⁴² Ibid Section 9

V. Period interim to vacation of office by President and ‘President by Parliament’

As explore above, the initiation and completion of processes pertaining to ‘President by Parliament’ would take a considerable time despite the designated time constraints. Therefore, pending the conclusion of such processes, the Constitution has provided for the role of ‘acting President’ to function in the interim. These provisions are contained in Article 40(1)(c) and 40(2).

Hence, for such interim period, the Prime Minister will become the ‘acting President’ and a member of Parliament will be appointed by him to the post of acting prime minister. In the event the Prime Minister is unable to take up the position of the ‘acting President’, the Speaker will take his place.⁴³

⁴³ The same modality is echoed in the proviso to Article 31(4)(b) and 31(4)(c) of the Constitution.