

Constitution (Amendment) (Republic) Act, 2024

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LONG TITLE

AN ACT to Repeal the Jamaica (Constitution) Order in Council 1962 and to provide for the legal recognition and operation of the Constitution of Jamaica notwithstanding the repeal of that Order in Council; to Amend the Constitution of Jamaica to provide for a non-monarchical Head of State, thereby establishing Jamaica as a republic; to make other amendments in respect of certain provisions of the Constitution; and to provide for connected matters.



2

Overview

- Jamaicanisation of the Constitution
- Establishment of the Office of President
- Expansion of the Senate
- Modification of the Alteration Provision
- Enhancement of Citizenship Provisions
- Alteration of provisions related to Qualification and Disqualification from Membership in the Parliament
- Incorporation of the Electoral Commission of Jamaica

3

01.

JAMAICANISATION OF THE CONSTITUTION

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JAMAICANISATION OF THE CONSTITUTION

The Bill gives effect to the *Jamaicanisation* of the Constitution by:

1. Repealing the Jamaica (Constitution) Order in Council and providing for the legal recognition and operation of the Constitution of Jamaica;
2. Inserting a Preamble;
3. Replacing the UK Interpretation Act 1889 with the Jamaican Interpretation Act
4. Incorporating National Symbols and Emblems

5

JAMAICANISATION OF THE CONSTITUTION – REPEALING THE JAMAICA (CONSTITUTION) ORDER IN COUNCIL, 1962

After six (6) decades of sovereignty, it is no longer acceptable that Jamaica's Constitution, although drafted in Jamaica and debated in the Parliament of Jamaica, should be contained in a Schedule to a British Imperial instrument – the Jamaica (Constitution) Order in Council, 1962 – made at the Court at Buckingham Palace in England pursuant to the West Indies Act.

6

JAMAICANISATION OF THE CONSTITUTION - REPEALING THE JAMAICA (CONSTITUTION) ORDER IN COUNCIL, 1962

As such, clause 2 of the Bill removes this imperial cloak by repealing the Jamaica (Constitution) Order in Council and providing that:

1. The Constitution of Jamaica, as contained in the Second Schedule of the Order in Council, remains in force and is to be read and construed as one with the amendments set out in this Bill; and
2. Empowers the Statute Law Commissioners to publish the Constitution of Jamaica as an Act comprised in Volume 1 of the Revised Laws of Jamaica

7

JAMAICANISATION OF THE CONSTITUTION - INSERTION OF A PREAMBLE

Clause 3 amends the Constitution by inserting Preamble which, in poetic and resonant tones, echo our heritage and proclaim the aspirations of the nation.

8

JAMAICANISATION OF THE CONSTITUTION – REPLACING THE UK INTERPRETATION ACT

For the purposes of interpreting the Constitution, section 1(12) currently provides that the UK Interpretation Act, 1889 shall apply. Accordingly, clause 6 amends the Constitution to prescribe that the provisions of the Jamaican Interpretation Act, instead, should be applied when interpreting the Constitution.

As such, the Jamaican Interpretation Act has been consequently amended in keeping with the general changes proposed in the Bill.

9

JAMAICANISATION OF THE CONSTITUTION - INCORPORATION OF NATIONAL SYMBOLS AND EMBLEMS

The Constitution is amended, at clause 34, to insert a new Fourth Schedule which incorporates the following national items:

- National Emblems;
- National Symbols;
- National Motto;
- National Pledge;
- National Song; and
- National Prayer

10

02.

ESTABLISHMENT OF THE OFFICE OF PRESIDENT

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ESTABLISHMENT OF THE OFFICE OF PRESIDENT - OVERVIEW

The Removal of the Monarch, as Jamaica's Head of State, prefaces a number of matters that has been largely consolidated into:

1. The Establishment of the Office of President;
2. A Jamaican who meets certain criteria

Generally, the Bill is structured to provide for different considerations in respect of the Office of President having regard to the replacement of the Monarch who comes into office through succession.

12

ESTABLISHMENT OF THE OFFICE OF PRESIDENT - OVERVIEW

Accordingly, Clause 11 repeals some of the provisions of **Chapter IV** of the Constitution in their entirety and replaces them with provisions in respect of the office of the President. These provisions relate to:

- qualifications for President;
- procedure for appointment;
- tenure of office of President (including the procedure for resignation and removal of the President from office); and
- immunity in the exercise of functions by the President

13

QUALIFICATIONS OF PRESIDENT

The proposed Section 24(2) at Clause 11 provides that a person shall not be qualified to be appointed as President unless that person -

- is a citizen of Jamaica, whether by birth or descent;
- has been ordinarily resident in Jamaica for a period of at least ten of the fifteen years immediately preceding the date of nomination; and
- is not disqualified for membership of the House of Representatives or the Senate

14

PROCEDURE FOR APPOINTMENT OF PRESIDENT

Section 25 at Clause 11 proposes that in appointing the President to office, there shall be a two-stage process:

- 1) nomination; and
- 2) confirmation

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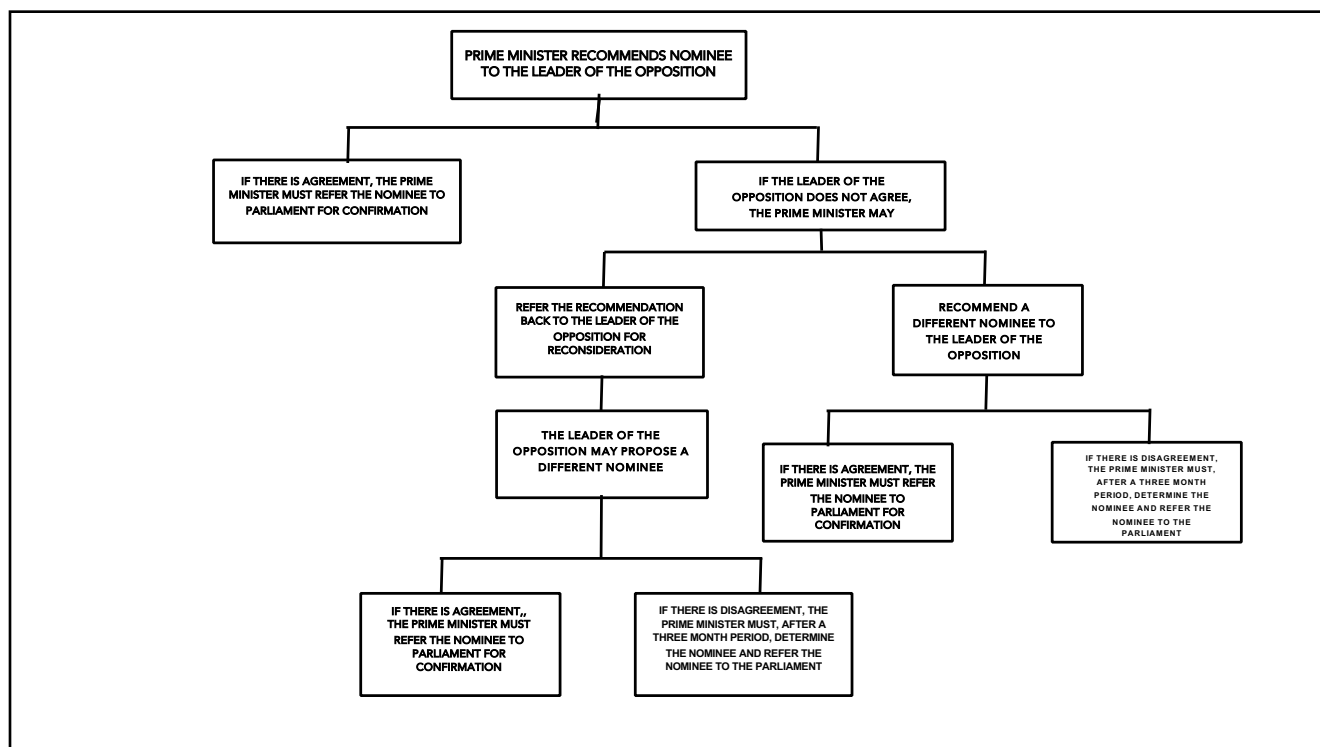
PROCEDURE FOR APPOINTMENT OF PRESIDENT

Nomination Process:

The Prime Minister is empowered to nominate a candidate for the office of President after a process of meaningful consultation with the Leader of the Opposition.

The Bill further stipulates that where the Prime Minister consults with the Leader of the Opposition, all reasonable steps must be taken by both parties to agree on the nomination.

16



17

PROCEDURE FOR APPOINTMENT OF PRESIDENT

Confirmation Process:

The nominee for Office of President is to be confirmed at a joint sitting of both Houses of the Parliament, where each House would vote separately by secret ballot.

The vote required to confirm the nominee is **an absolute majority** of all Members.

18

TENURE OF OFFICE

Section 26(1) proposes that the person appointed as President shall hold office for a term of **seven (7) years** and is eligible to be re-appointed for a further term not exceeding **five (5) years**.

The Bill further stipulates that the question of re-appointment should be determined within a period of one (1) year immediately preceding the expiration of the person's first term as President.

19

REMOVAL FROM OFFICE

The CRC in its Report was of the view that while it is necessary to provide the Office of President with security of tenure so that it is not subject to the dictates of Parliamentarians, it is equally necessary to provide a means of removing an incompetent, corrupt or misbehaving President.

Accordingly, the Bill proposes at section 26(5) in clause 11 that at any time during the President's term of office, the President may be removed from office on any of the grounds specified.

20

REMOVAL FROM OFFICE

Grounds for removal:

- (a) is unable to perform the functions of the office, whether arising from infirmity of mind or body or from any other cause;
- (b) has behaved, or is behaving, in a manner that endangers the security of Jamaica;
- (c) has behaved, or is behaving, in a manner that brings the office of President into disrepute; or
- (d) is, by that President's own act, under a duty of allegiance, obedience or adherence to a foreign power or State

21

REMOVAL FROM OFFICE

Where the question of whether the President should be removed from office on any of the grounds prescribed arises, a motion may be tabled by the Leader of Government Business in the House at a joint sitting of both Houses of the Parliament

If the motion is carried by a two-thirds majority of all the members of each House of Parliament, voting by secret ballot, an investigatory panel will be established to investigate the question of whether the President should be removed from office

If the investigatory panel reports that any ground for removal has been made out to the satisfaction of the panel, Parliament shall vote by secret ballot at a joint sitting of both Houses of Parliament on the question of whether or not to remove the President from office

22

IMMUNITY

Section 27 proposes that a person who holds the office of President or exercises the functions of that office shall not be liable in any criminal and civil proceedings for -

- (a) any act done in respect of those functions; or
- (b) while in office or exercising the functions of the office, any act not involving treason, violence or fraud.

23

03.

EXPANSION OF THE SENATE

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EXPANSION OF THE SENATE

The Senate will comprise:

- **Fifteen (15) Senators** appointed by the President, acting in accordance with the advice of the Prime Minister;
- **Nine (9) Senators** appointed by the President, acting in accordance with the advice of the Leader of the Opposition; and
- **Three (3) Senators** appointed by the President, in the President's discretion, from among persons in the private sector, civil society, faith-based or community based organisations, or other sectors of society and in making any such appointment, the President may have regard to the representation, by any such persons, of the interests of Jamaicans who reside abroad

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EXPANSION OF THE SENATE

The Bill also retains the parliamentary safeguard that requires the vote of at least one member of the Opposition.

26

04.

MODIFICATION OF ALTERATION PROVISION

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MODIFICATION OF ALTERATION PROVISION

Clause 22 proposes to amend section 49 to reflect the following changes while maintaining the pre-eminence of the provision:

- Bills seeking to amend the Constitution **must** be introduced in the House of Representatives;
- The interpretation provisions of the Constitution set out at section 2A and the Jamaican Interpretation Act, are entrenched in the same manner as those entrenched provisions prescribed at section 49(2) and 49(3) of the Constitution to which they apply;

28

MODIFICATION OF ALTERATION PROVISION

- Where a Bill seeks to amend ordinary provisions of the Constitution, the prescription of a **14-day period** between the introduction of that Bill in the House of Representatives and the commencement of the debate and a further period of **14-days** between the conclusion of that debate and the passage of the Bill;
- The periods between:
 - the introduction of Bills in the House of Representatives and the commencement of the debate; and
 - the conclusion of that debate and the passage of the Bill in that House
 have been reduced from **three (3) to two (2) months** for entrenched and deeply entrenched provisions prescribed at 49(2) and 49(3) respectively;

29

MODIFICATION OF ALTERATION PROVISION

- If a Bill which alters any of the entrenched and deeply entrenched provisions of the Constitution is passed by the House of Representatives:
 - twice in the same session and having been sent to the Senate is rejected by the Senate, a reduction from **seven (7) months to four (4) months** on the first occasion that the Bill is sent to the Senate before the end of the session; and
 - in two successive sessions (whether of the same Parliament or not) and having been sent to the Senate, is rejected by the Senate, a reduction from **six (6) months to four (4) months**, on the second occasion that the Bill is sent to the Senate

30

MODIFICATION OF ALTERATION PROVISION

- The Constitution currently provides that any amendment to section 49 requires the approval of the electorate. It is therefore being proposed that where a Bill seeking to amend section 49(2) of the Constitution, which outlines those provisions that are entrenched, contains only such alterations that **add to or correct any reference made to such provisions**, that Bill shall be deemed to have been passed if it secures a two-thirds majority vote in both Houses of Parliament **only**.

31

05.

ENHANCEMENT OF CITIZENSHIP FRAMEWORK

32

ENHANCEMENT OF CITIZENSHIP FRAMEWORK

Clause 7 of the Bill repeals and replaces section 8 of the Constitution with a provision that:

- (a) retains the protection of Jamaicans who acquire citizenship by virtue of birth, descent or marriage from being deprived of their Jamaican citizenship; and
- (b) stipulates that a person who has been aggrieved by the deprivation of that person's Jamaican citizenship may apply to the Supreme Court for redress.

Clause 8 of the Bill repeals and replaces section 9 and 10 of the Constitution with provisions which:

- (a) prescribe that any person who is a citizen of Jamaica may renounce their Jamaican citizenship in accordance with the provisions of a law specifying the procedure for renunciation; and
- (b) set out the powers of Parliament in relation to citizenship

33

ENHANCEMENT OF CITIZENSHIP PROVISIONS

Clause 9 of the Bill, which repeals and replaces section 11 of the Constitution, empowers Parliament to make laws in respect of countries that are members of the Commonwealth and the Caribbean Community (CARICOM).

34

06.

ALTERATION OF PROVISIONS RELATED TO QUALIFICATION AND DISQUALIFICATION FOR MEMBERSHIP IN THE PARLIAMENT

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QUALIFICATION AND DISQUALIFICATION FOR MEMBERSHIP IN THE PARLIAMENT

Section 37(1), which provides for the qualifications of electors for elections to the House of Representatives, is amended, at clause 18, by restricting the qualification [of electors] to citizens of Jamaica, resident in Jamaica at the date of registration, who have attained the prescribed age **only**.

Section 39(a), which stipulates the qualification for membership in the Senate and House of Representatives, is amended, at clause 19, by prescribing that Jamaican citizenship, rather than Commonwealth citizenship, is the essential qualifying citizenship criterion.

36

QUALIFICATION AND DISQUALIFICATION FOR MEMBERSHIP IN THE PARLIAMENT

Section 40, which indicates the circumstances in which a person may be disqualified from either house of the Parliament, is amended at clause 20 by repealing subsections (2)(d) and (e) and replacing it with a new provision that expands the circumstances listed to include convictions for fraud or violence, where the penalty imposed is a sentence of imprisonment for at least eighteen months, and treason.

37

QUALIFICATION AND DISQUALIFICATION FOR MEMBERSHIP IN THE PARLIAMENT

Section 41, which provides for the tenure of office of Senators and members of the House of Representatives, is amended at clause 21, to stipulate that the seat of a member of either House shall become vacant if he/she ceases to be a Jamaican citizen rather than a Commonwealth citizen.

38

07.

INCORPORATION OF THE ELECTORAL COMMISSION OF JAMAICA

39

INCORPORATION OF THE ELECTORAL COMMISSION OF JAMAICA

Chapter V of the Constitution is amended, at clause 28(1), by incorporating/enshrining the Electoral Commission of Jamaica (ECJ) in the Constitution at section 67A. This section provides for the establishment, objects and functions of the ECJ and the power of Parliament to make laws in relation to the constitution, staffing, and resources of the Commission and quorum at its meetings.

Consequently, the Electoral Commission (Interim) Act will be amended to remove the words “interim” from the short title.

40