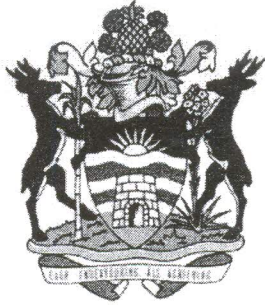


ANTIGUA AND BARBUDA



THE REPRESENTATION OF THE PEOPLE (AMENDMENT) ACT, 2011

No. of 2011

THE REPRESENTATION OF THE PEOPLE (AMENDMENT) ACT, 2011

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ANTIGUA AND BARBUDA

THE REPRESENTATION OF THE PEOPLE (AMENDMENT) ACT, 2011

No. of 2011

AN ACT to amend the Representation of the People Act Cap. 379 and for incidental and connected purposes.

ENACTED by the Parliament of Antigua and Barbuda as follows: —

1. Short title

(1) This Act may be cited as the Representation of the People (Amendment) Act, 2011 and shall come into force on such day or days as the Minister may appoint by Order.

(2) An Order under subsection (1) may appoint different days for different provisions or for different purposes of the same provision.

2. Interpretation

In this Act “the principal Act” means the Representation of the People Act Cap. 379.

3. Amendment of section 2 — Interpretation

Section 2 of the principal Act is amended in the definition of “election officer” —

- (a) by inserting after “Supervisor of Elections” the words “the Chief Registration Officer,”; and
- (b) by repealing the words “Assistant Chief Elections Officer”.

4. Repeal and substitution of section 3 — Electoral Commission

Section 3 of the principal Act is repealed and substituted by the following section—

“3. Electoral Commission.

(1) For the purposes of conducting elections under this Act, there shall be established the Electoral Commission.

(2) The Commission shall consist of a Chairman, a Deputy Chairman, and five other Members who shall be persons of integrity, and who shall be nominated in accordance with subsection (2A).

(2A) The Commission’s membership shall be nominated as follows—

- (a) the Chairman shall be nominated by the Prime Minister after consultation with the Leader of the Opposition;
- (b) the Deputy Chairman shall be nominated by the Leader of the Opposition after consultation with the Prime Minister;
- (c) two members shall be nominated by the Prime Minister;
- (d) one member shall be nominated by the Leader of the Opposition;
- (e) one member shall be nominated jointly, subject to subsection (3A), by the Antigua Christian Council and the United Evangelical Association of Antigua and Barbuda; and
- (f) one member shall be nominated jointly, subject to subsection (3A), by the Antigua and Barbuda Chamber of Commerce and Industry, the Antigua and Barbuda Trades Union Congress and the Antigua & Barbuda Employers’ Federation.

(3) The members of the Commission shall be appointed by the Governor-General in accordance with subsection (2A), by instrument under the Public Seal.

(3A) In the event of any of the organisations referred to in subsection (2A)(e) or (f) ceasing to exist without constitutional provision being made for a successor body, the power of nomination of the member in question shall be exercised in accordance with subsection (5B).

(3B) The Chairman and the Deputy Chairman of the Commission shall cease to hold office if they cease to be members of the Commission.

(4) A person shall not be qualified to hold office as a member of the Commission if he is a political party official, a Minister of Government, a Member of Parliament, or a Candidate for election to the House of Representatives or a Senator or a senior public servant, or a former Parliamentarian who has ceased to be a Parliamentarian for less than ten years.

(5) The office of a member of the Commission becomes vacant—

- (a) at the expiration of seven years from the date of his appointment but he shall be eligible for reappointment;
- (b) where any circumstances arise, that, if he were not a member of the Commission, would cause him to be disqualified for appointment as a member;

- (c) if he resigns his office by writing under his hand addressed to the Governor-General;
- (d) if he dies;
- (e) if he is removed from office in accordance with section 4; or
- (f) if he is absent from three consecutive meetings of the Commission without reasonable excuse in writing.

(5A) Where the office of a member of the Commission becomes vacant, the person or organisation at whose nomination he was appointed shall within 4 weeks nominate another person to be appointed to the vacant place in accordance with subsection (3).

(5B) Where there is a failure to make the nomination within 4 weeks of the office becoming vacant and the Speaker determines that the failure may frustrate the purpose of the Commission—

- (a) the Speaker shall recommend to the Governor-General, a person to fill the vacancy; and
- (b) the Governor-General shall, acting on the recommendation of the Speaker, by instrument under the Public Seal appoint the person to serve as a member of the Commission for a period not exceeding one year.

(5C) The Prime Minister or the Leader of the Opposition, as applicable, or the organisation referred to in subsection (5A) shall within 2 weeks of the expiration of the term of office of the Member of the Commission appointed under subsection (5B) communicate a nomination to the Governor-General in accordance with subsection (2A) for a person to be appointed as a member of the Commission.

(5D) Where there is a failure to communicate the nomination in accordance with subsection (5C) —

- (a) the Speaker shall recommend to the Governor-General, a person to fill the vacancy; and
- (b) the Governor-General shall, acting on the recommendation of the Speaker, by instrument under the Public Seal appoint the person to serve as a member of the Commission for period not exceeding one year and may extend the appointment if at the expiration of the period the Prime Minister or the Leader of the Opposition, as applicable or the person or organisation referred to in subsection (5A) fails to communicate the nomination in accordance with subsection (2) for a person to be appointed as a member of the Commission.

(5E)A person appointed under subsection (5D) may be a person previously appointed under subsection (5B).

(6) Where a member of the Commission, other than the Chairman, is unable by reason of his illness or for any other reason, to perform the functions of his office, the Governor-General may in accordance with the manner prescribed by subsection (3) appoint a person to

act as temporary member of the Commission and authorise him to perform the functions of that office.

(7) If the Chairman is unable, by reason of his illness, or for any other reason, to perform the functions of his office, the Deputy Chairman shall perform the functions of that office.

(8) A member of the Electoral Commission shall cease to hold office on attaining the age of seventy years.

(9) The members of the Commission shall take an Oath or Affirmation before the Governor- General.

(10) In this section “political party official” means an executive member of a political party or any branch or unit thereof.”.

5. Amendment of section 4 — Removal from office

Section 4 of the principal Act is amended in subsection (1)—

- (a) by inserting after “from office for” the words “gross incompetence in exercising, or”;
and
- (b) by inserting after “integrity” the words “or the impartiality”.

6. Amendment of section 5 — Quorum at meetings

Section 5 of the principal Act is amended—

- (a) in subsection (1) by repealing the word “four” and substituting the word “five”; and
- (b) in subsection (3) by adding at the end the words “and in the event of an equality of votes the Chairman shall have a casting vote.”.

7. Amendment of section 6 — Functions and duties of the Commission

Section 6 of the principal Act is amended in subsection (2) by —

- (a) inserting after “election officers” the words “except for the Supervisor of Elections”;
and
- (b) inserting before “prescribing” the words “, subject to the provisions of this Act, for”.

8. Amendment of section 9 — Powers and duties of the Supervisor of Elections

Section 9 of the principal Act is amended —

- (a) in subsection (1) by repealing the words “be the Chief Executive Officer of the Commission and shall”;
- (b) after subsection (1) by inserting the following subsections —

“(1A) The term of office of the Supervisor of Elections shall be seven years from the date of his appointment.

(1B) The Supervisor of Elections may be re-appointed for no more than one further term of seven years which may or may not follow immediately after the expiry of his first term.

(1C) Notwithstanding subsections (1A) and (1B) the age at which the Supervisor of Elections shall vacate his office under section 67 of the Constitution is sixty-five years.”;

(c) in subsection (2) —

(i) by repealing the words “shall be the Chief Registration Officer and, for the purposes of an election be the Chief Elections Officer and”;

(ii) in paragraph (a) by repealing the word “the” and substituting the word “those”, and adding at the end the words “which relate to the administration of elections; and”;

(d) after subsection (2) by inserting the following subsection —

“(2A) The Supervisor of Elections shall, with the assistance of the Chief Elections Officer, supervise the conduct of elections, and in particular shall ensure

(a) that arrangements are made to identify adequate and sufficient polling stations and that they are accessible to the disabled, and to arrange with the owners for their use as polling stations;

(b) that the returning officers, presiding officers, clerk, and counting supervisors and assistants are duly appointed and properly trained and instructed in their duties;

(c) that the returning officers are provided with sufficient resources to provide each polling station with the requisite stationery, supplies and equipment for the election in accordance with the Election Rules;

(d) that arrangements are made for the collection and storage of all election materials after the election;

(e) that sufficient and adequate premises are available for counting the votes after the election, and that arrangements are made for the safe transit of the documents from the polling station to the place of the count in accordance with the Election Rules;

(f) that the returning officer for each constituency has sufficient and adequate resources, including stationery, to enable the count to take place expeditiously and efficiently; and

(g) that arrangements are made for the safe retention and confidential disposal of all documents in accordance with the Election Rules.”;

(e) in subsection (3) —

(i) by repealing the word “Upon” and substituting the words “Within a period of six months before the date prescribed by the Constitution for the holding of an election, but in any event by”;

- (ii) by repealing the words “an Assistant Chief Elections Officer” and substituting the words “a person who shall act as assistant to the Supervisor of Elections.”; and
- (f) in subsection (4) by repealing the words “Assistant Chief Elections Officer” and substituting the words “the person appointed under subsection (3)”.

9. Insertion of Section 9A — Powers and duties of the Chief Registration Officer

After section 9 of the principal Act the following section is inserted —

“9A — Powers and duties of the Chief Registration Officer

(1) The Commission shall appoint a Chief Registration Officer, taking into account the recommendations of the Chairman of the Commission.

(2) The Chief Registration Officer shall be responsible to the Commission for the preparation and maintenance of the Register of Electors in accordance with this Act and shall—

- (a) issue to the registration officers such instructions as are necessary for ensuring effective execution of the provisions of this Act relating to the preparation and maintenance of the Register of Electors; and
- (b) execute and perform, all other functions which by this Act are conferred or imposed upon him.”.

10. Insertion of Section 9B — Powers and duties of the Chief Administrative Officer

Before section 10 of the principal Act the following section is inserted —

“9B — Powers and duties of the Chief Administrative Officer

(1) The Commission shall appoint a Chief Administrative Officer, who shall also be Secretary to the Commission.

(2) The Chief Administrative Officer shall be responsible to the Commission for the administration of the Commission’s internal affairs, and shall give administrative support to the Supervisor of Elections and the Chief Registration Officer.”.

11. Amendment of section 10 – Appointment and duties of returning officer

Section 10 of the principal Act is amended in subsection (1) by repealing the word “may” and substituting the word “shall”.

12. Amendment of section 13 — Saving of rights of election officers

Section 13 of the principal Act is amended by repealing the words “Assistant Chief Elections Officer”.

13. Amendment of section 15 — Persons entitled to vote

Section 15 of the principal Act is amended —

- (a) in subsection (4) by repealing the words “the Supervisor of Elections” and substituting the words “the Chief Registration Officer”;
- (b) in subsection (6) by repealing the words “the Supervisor of Elections” and substituting the words “the Chief Registration Officer”; and
- (c) in subsection (7) by repealing the words “the Supervisor of Elections” and substituting the words “the Chief Registration Officer”.

14. Amendment of section 16 – Qualification for registration and right to vote

Section 16 of the principal Act is amended in subsection (1)(b) by inserting the word “lawfully” before the word “resided”.

15. Amendment of section 17 – Disqualification for registration

Section 17 of the principal Act is amended by repealing the word “or” at the end of paragraph (a).

16. Amendment of section 21 — Registers of Electors

Section 21 of the principal Act is amended in subsection (2) by repealing the word “photograph,”.

17. Amendment of section 23 — Revised register

Section 23 of the principal Act is amended in subsection (2)(a) by repealing the words “and photographs”.

18. Amendment of section 70 — Production of Document

Section 70 of the principal Act is amended in subsection (5) by inserting after “Supervisor of Elections” the words “or the Chief Registration Officer”.

19. Amendment of section 71 — Retention of Documents

Section 71 of the principal Act is amended in subsection (3) by inserting after “Supervisor of Elections” the words “and the Chief Registration Officer”.

20. Amendment of second schedule – Registration Regulations

The second schedule to the principal Act is amended—

- (a) in regulation 18(2) by inserting after paragraph (d) the following paragraph—
 - “(e) that the consideration of a claim or objection would be facilitated by the attendance in person of the person objected to, he may by notice in writing addressed to the person objected to, and delivered to that person’s qualifying address, require the attendance of the person objected to at the hearing.”, and

(b) in regulation 20 by repealing subregulation (4) and substituting the following subregulations—

“(4) Any person entitled to appear and be heard may do so either in person or by counsel or by any other person on his behalf, except that where a person objected to is required to attend in person in accordance with Regulation 18(2)(e) he shall attend in person and may, in addition, be represented by counsel.

(4A) If a person objected to is required to attend a hearing in person in accordance with Regulation 18(2)(e) and fails to do so without providing a reasonable excuse the objection shall be allowed and the registration officer shall make the necessary alteration to the electors’ list.”.

21. Commissioners to cease to hold office

On the coming into force of this Act the Chairman, Deputy Chairman and members of the Commission shall cease to hold office, but they shall be eligible for re-appointment.

22. Repeal

The Supervisor of Elections (Retirement Age) Act Cap. 421 is repealed.

Passed by the House of Representatives on the _____ Passed by the Senate on the _____, 2011.
, 2011.

Speaker.

President.

Clerk to the House of Representatives.

Clerk to the Senate.

EXPLANATORY MEMORANDUM

This Bill would amend the law relating to the composition and administration of the Electoral Commission and the process and appointment of its chairman and members. It would also make minor amendments to the administrative processes of preparing and maintaining the registers of electors, and to the statutorily prescribed electoral procedures.

The Bill would introduce a revised procedure for the appointment of the members of the Electoral Commission and would increase the number of members from five to seven. The Church organisations and the Chamber of Commerce would be given the power of nomination of one member each.

The Bill would provide for the appointment of a Chief Registration Officer and a Chief Administrative Officer, in addition to the Supervisor of Elections. There would be transferred to the Chief Registration Officer the functions of drawing up and maintaining the register of electors. The Chief Administrative Officer would be the Secretary to the Commission and would take over the administration of the Commission's internal affairs, including human resources activities, and would provide administrative support to the Supervisor of Elections and the Chief Registration Officer. This would leave the Supervisor of Elections free to concentrate on the election process.

The Bill would also make explicit the duties of the Supervisor of Elections, the Chief Administrative Officer and the Chief Registration Officer, and would make changes to the terms of appointment of the Supervisor of Elections.

Minor amendments would be made to the electoral process to remove unnecessary expenditure and bureaucracy, and one or two ambiguities would be eliminated.

Clause 1 provides the short title and **Clause 2** is an interpretation clause.

Clause 3 is a consequential amendment arising from later provisions of the Bill.

Clause 4 introduces the new procedure for the appointment of the members of the Electoral Commission. The Prime Minister and the Leader of the Opposition continue to have the power to nominate five members, but one new member is to be nominated by the Church organisations and the other new member is to be nominated by organisations representative of the business community.

Provision is made for the event of a nominating organisation ceasing to exist, and for a failure to nominate.

Clause 5 strengthens the requirement of impartiality of the members of the Commission, and, with amendments in **Clause 4** brings them in line with that required of the election officials.

Clause 6 gives the Chairman of the Commission a casting vote in the event of an equality of voting.

Clause 7 amends section 6 of the principal Act. As presently drafted, subsection 2 gives the Commission power to appoint the “election officers”. The expression “election officers” is defined to include the Supervisor of Elections, and this is necessary elsewhere in the principal Act, but the Constitution provides that the Supervisor of Elections may only be appointed by the Governor-General.

Clause 8 makes provision to limit the term of service of the Supervisor of Elections. It also makes explicit his responsibility for ensuring the efficient and effective administration of the electoral process. The clause also changes the title of the Assistant Chief Elections Officer by removing the word “Assistant”, and makes explicit his role as assistant to the Supervisor of Elections.

Clause 9 introduces the new duty of the Commission to appoint a Chief Registration Officer, who will work directly to the Commission, and will be responsible for the process of the registration of electors, which will no longer be a responsibility of the Supervisor of Elections.

Clause 10 introduces a further new duty for the Commission to appoint a Chief Administrative Officer, who, again, will work directly with the Commission and will be responsible for the administration of the Commission’s internal affairs, such as human resources, training and general administration. He will be required to assist the Supervisor of Elections and the Chief Registration Officer when required.

Clause 11 provides that the Commission shall be under a duty to appoint returning officers.

Clause 12 is a consequential amendment.

Clause 13 is a series of consequential amendments.

Clause 14 provides that periods of residence required for registration shall be lawful.

Clause 15 removes an ambiguity in the principal Act. At present it is possible to interpret section 17 as providing that a person is disqualified if he is either insane or in prison and either under a death sentence or is otherwise disqualified. The amendment will make clear that any one of these grounds alone will disqualify.

Clauses 16 and 17 remove the requirement for the registers of electors to contain the photographs of the persons specified in sections 20 and 23 of the principal Act.

Clauses 18 and 19 are consequential amendments.

Clause 20 enables the registration officer to require the presence of a person objected to at a hearing if this will facilitate the consideration of a claim or objection.

Clause 21 is consequential upon the new arrangements for membership of the Commission.

Clause 22 is consequential upon the revised conditions of service of the Supervisor of Elections contained in Clause 8.

*Honourable Justin L. Simon QC
Attorney General and Minister responsible for Legal Affairs*