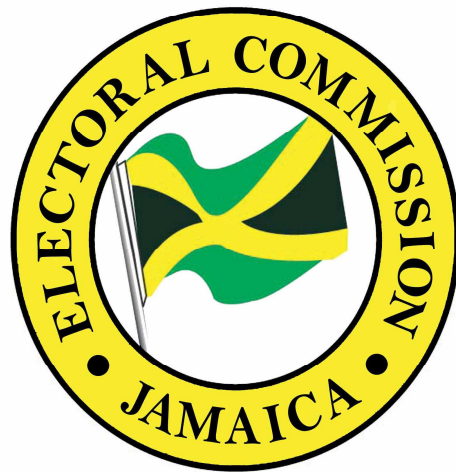


ELECTORAL COMMISSION OF JAMAICA

REPORT TO PARLIAMENT



Continuing Legal Reform

OCTOBER, 2010

INTRODUCTION

The Jamaican electoral system has made great progress over the last 31 years since the establishment of the Electoral Advisory Committee. This has been a result of the collective effort of a large number of persons at the national, parish and community levels. These persons have included members of government, political parties, religious denominations, civil society organizations and concerned individuals. This progress has been recognized by the international community. The Organization of American States (OAS) identified Jamaica as one of the leading countries in the Western Hemisphere in the application of information technology and communication systems to the electoral process. The Commonwealth Secretariat is highlighting Jamaica for best practices in good governance in the area of the conduct of elections and the delineation of constituency boundaries.

Despite this progress and international recognition there is still room for continued improvements in some areas. This Report addresses the issue of continued legal reform that, in the opinion of the Electoral Commission, will further strengthen and enhance the electoral process. Specifically, the Report recommends amendments to the Electoral Commission (Interim) Act of 2006 and also to the Representation of the People Act (the ROPA) that will have the effect of improving different aspects of the operation of the electoral machinery. Each set of amendments will be presented in turn.

AMENDMENTS TO THE ELECTORAL COMMISSION (INTERIM) ACT AND ENTRENCHMENT OF THE ELECTORAL COMMISSION OF JAMAICA IN THE CONSTITUTION OF JAMAICA.

The Electoral Commission (Interim) Act of 2006 gave effect to the establishment of the Electoral Commission. It gives the Commission the authority to safeguard the democratic foundations of Jamaica by enabling eligible electors at periodic intervals to elect their representatives through free and fair elections. It also gives the Commission the responsibility to advise Parliament on the number of constituencies into which Jamaica should be divided and their boundaries.

The Act anticipates that the Electoral Commission would, in due course of time, be entrenched in the Constitution of Jamaica. Accordingly, the Commission submitted to Parliament a Report dated October 1, 2008 recommending such entrenchment and now further recommends that such entrenchment be effected under section 49 (2) of the said Constitution. Experience since the passage of the Act and the establishment of the Commission in December 1, 2006 has suggested that some clauses of the Act should be fine tuned so that they are more consistent with standard and established practices that have been highly successful in enabling the efficient operation of the Commission. The existing formulation of these clauses has resulted in them being observed mainly in the breach. This is undesirable. In addition, experience of the Commission suggests a small change in the composition of the Commission as well as the need to widen the advisory functions of the Commission within the public sector beyond only giving advice to Parliament on boundaries. Against this background the Commission recommends the amendments to the Electoral Commission (Interim) Act, 2006 as set out below:

RECOMMENDED AMENDMENTS TO THE ELECTORAL COMMISSION (INTERIM) ACT, 2006.

- Under the heading ‘Functions of the Commission’ amend section 6 (1) of the Act by including a new sub paragraph (1) (p) to read **“the giving of general advice on all matters related to the electoral process to Cabinet, statutory bodies and any person or entity falling within the authority of the Government of Jamaica”**.
- Amend section 8 (3) of the Act by substituting for the words contained therein the following words **“For the purposes of subsection (1), the “prescribed rate” means a rate prescribed by the Government of Jamaica for comparable posts in the public sector, or such higher rate as the Committee may, upon the advice of the Commission, by order prescribe.**
- Further amend section 8 by adding the following as subsection (6) **“Any person appointed as enumerator, verifier, returning officer, assistant returning officer, presiding officer, poll clerk, polling station security assistant, technician or other personnel or any person temporarily appointed by the Commission to carry out functions associated with the registration of electors and/or holding of elections shall be paid at the rate prescribed by the Commission.”**
- Under the **First Schedule** of the Electoral Commission (Interim) Act amend the following:
 - Amend section 1 – (1) by deleting the word ‘nine’ and substituting therefor the word ‘eight’. The section would now read **“The Commission shall consist of eight members”**.
 - Amend section 1(c) by deleting all the words appearing after the words ‘sub-paragraphs (a) and (b)’ and by substituting therefor the words **“and shall be entitled to attend meetings of the Commission as required but shall not be eligible to vote at such meetings.”** The full text of section 1 (c) to read thus:

The Director of Elections shall be appointed on the recommendation of the eight Commissioners appointed under sub-paragraphs (a) and (b) and shall be entitled to attend meetings of the Commission as required but shall not be eligible to vote at such meetings.
 - Amend section 7 (1) (Remuneration of members) by deleting the words **“other than the Director of Elections”**.
 - Further amend section 7 by adding the following as Section 7 (2) **“The emoluments payable to the Chairman shall be equated to the emoluments which may, from time to time, be payable to the Senior Puisne Judge”**.

- Re-numbering the existing section 7 (2) as 7 (3) , 7 (3) as 7(4) , 7(4) as 7(5) and 7 (5) as 7 (6).
- Amend section 20(1) of the Act by deleting the words “with the approval of the Minister”.

RECOMMENDED AMENDMENTS TO THE REPRESENTATION OF THE PEOPLE ACT

1. The former Electoral Advisory Committee had submitted a Report to Parliament, dated October 3rd, 2006, which Report was tabled but not debated and approved. It addressed two matters of concern:
 - (i) The use of motor vehicles and their regulation for conveying voters to the poll.
 - (ii) The Constituted Authority.

The Electoral Commission has taken the decision to incorporate these two matters in the current Report. Accordingly, this Report addresses the following matters:

- The transfer of indoor agents within polling stations in a constituency;
 - A new clause designed to prohibit the use of any recording device by an elector prior to, during, or after the marking of the ballot in the polling station;
 - The postponement of elections;
 - The use of motor vehicles and their regulation for conveying voters to the poll;
 - The Constituted Authority.
2. Currently, the Representation of the People Act stipulates that all Candidates should be provided with four copies of the Official Voters’ List on Nomination Day following their nomination. The ROPA also stipulates that within seven days after Nomination Day the Returning Officer shall deliver or send by registered post to each candidate a copy of a military voters’ list, a police voters’ list and an Election Officers voters’ list prepared in relation to each constituency. What the ROPA does not currently require is that the civil voters’ list, that is, the Official Voters’ List minus the military, police and Election Officers voters’ lists, be also provided to Candidates at the same time as the other three lists. Presently, this does not allow Candidates the time to independently verify that the police list, military list, Election Officers list and civil list add up exactly to the Official Voters’ List. Consequently, this has the potential to lead to suspicion about the civil list which is used in polling stations on Election Day. The amendment proposed is that all four components of the Official List be distributed to Candidates at the same time prior to Election Day.

3. Currently, the Representation of the People Act allows Candidates to apply for the transfer of agents from the polling division of original registration to another polling division to which they have been appointed to serve. The transfer is effected, provided that the Returning Officer receives a written notification from the candidate not less than forty-eight hours before the opening of the poll. As a result of substantial increase in the number of such applications, Returning Officers and the Commission need more time to process and effect such applications. In addition, The Commission is recommending the prohibition of transfer of candidates' agents between polling stations within the same polling location.
4. Digital technology has made it possible for cameras to be included in a wide range of devices and has also made it easy to transport such devices. One of the foundations of democracy is the secrecy of the ballot. Digital cameras, cellular telephones and similar devices can be used by electors to record their ballots, thus violating the principle of the secrecy of the ballot. The Commission is recommending that the ROPA be amended to include a provision prohibiting the use of any recording device, digital or otherwise, to be used by electors to record their ballot after it has been marked and to make violation of such prohibition subject to the same penalty as other violations of the secrecy of the ballot.
5. The use of Motor Vehicles and their regulation for conveying voters to the poll.

The Electoral Commission is of the view that in this post-modern era the sections of the Representation of the People Act that apply to the use of motor vehicles to convey voters to the poll (Section 71), the registration of motor vehicles as electoral vehicles (Section 72), the special provisions relating to urban constituencies (Section 73) and the restrictions on users of registered electoral vehicles (Section 74) are no longer necessary and should be deleted from the Representation of the People Act.

6. The Constituted Authority

Under section 44A of the Representation of the People Act the Constituted Authority which comes into effect whenever an election notice is issued is comprised of:
“The ‘three’ selected members of the Committee and two other persons one of whom shall be a retired judge; and one of whom shall be a member of the Privy Council.”

The Electoral Commission (Interim) Act of 2006 increased the number of selected members on the Electoral Commission from three to four. In order to achieve congruence with the relevant section of the Representation of the People Act it is necessary to amend the number of selected members on the Constituted Authority from three to four.

7. In 2007 there was the unprecedented event of a General Election that had been duly called being postponed by virtue of the fact that a hurricane had struck the country in the period between Nomination Day and Election Day. Reflection and due consideration of matters related to this unprecedented occurrence now result in recommendations to amend the section of the Representation of the People Act (ROPA) dealing with the postponement of elections.

Currently, the Representation of the People Act allows for the postponement of elections by the Governor General in Council. The Commission is recommending that Sections 20 (d) and (e) of the Representation of the People Act should be amended so that advice to the Governor General would come from the Constituted Authority.

SPECIFIC RECOMMENDATIONS

- **Time and Manner of Delivery of Official List of electors to Candidates**

It is recommended that section 18 of the Representation of the People Act be amended to add in the last line after the word “election” the words:

“Not later than eight days after the date designated as Nomination Day, every Returning Officer shall furnish to each candidate who has been duly nominated to contest the election in the constituency over which the Returning Officer has authority, four (4) copies of the official list of electors in force for such elections, disaggregated into four (4) parts as follows:

- Military Voters’ List
- Police Voters’ List
- Election Officers Voters’ List
- Civil Voters’ List”

- **Delete section 28(3) (b) of the Act.**

- **Transfer of electors in special cases**

It is recommended that section 105 of the Representation of the People Act (and the corresponding sections of the Parish Council and Kingston and St. Andrew Corporation Acts) be amended by deleting the words “**Forty-eight hours**” wherever they appear and by substituting therefor the words “**Seventy-two hours**”. Further, it is recommended that section 105 be amended to prohibit the transfer of agents of candidates between polling stations within the same polling location.

- **Use of Cellular phone, digital camera, or other recording device to capture the image of the marked ballot**

It is recommended that Section 35 of the ROPA should be amended as follows:

1. Amend subsection (7) by inserting and indenting in line three thereof after the word ‘Act’, the numeric symbol (i) followed by the words ‘intentionally displays his ballot paper so as to make known to any person the candidate for

or against whom he intends to vote’ and by deleting the full stop after the word ‘vote’ and by substituting therefor a semi-colon followed by the word ‘or’ and the symbol (ii) followed by the words ‘uses a cellular phone, digital camera or other device to record, photograph or otherwise capture the image of a marked ballot paper’.

2. Amend subsection (8) in line (1) one of the said subsection by adding the numeric symbols (i) and (ii) after the word and figure ‘subsection (7)’.
3. Further amend subsection (8) by adding a paragraph ‘d’ to read:

‘(d). pursuant to subsection (7)(ii) the presiding officer shall so deface the ballot as to render it a spoiled ballot and shall not thereafter deliver a second ballot paper to the elector’.
4. Amend subsection (9) in line three thereof to insert immediately after the ‘(7)’ the numeric symbol ‘(i)’.

It is intended, therefore, that section 35, sub-sections (7), (8) and (9) as amended should now read as follows:

35 (7) The provisions set out in subsection (8) shall apply in any case where an elector, except as otherwise permitted by this Act-

- (i). intentionally displays his ballot paper so as to make known to any person the candidate for or against whom he intends to vote; or
- (ii). uses a cellular phone, digital camera or other device to record, photograph or otherwise capture the image of a marked ballot paper.

(8) The provisions referred to in subsection (7) are as follows-

- (a) the presiding officer shall issue a warning to the elector in relation to the display;
- (b) the elector shall forthwith restore the ballot paper to the presiding officer;
- (c) the presiding officer shall –
 - (i) so deface the ballot so as to render it a spoiled ballot; and
 - (ii) deliver a second ballot paper to the elector.
- (d) pursuant to subsection (7)(ii) the presiding officer shall so deface the ballot paper as to render it a spoiled ballot and shall not thereafter deliver a second ballot paper to the elector.

(9) Where, pursuant to subsection (8), an elector has been given a second ballot paper and acts in the manner described in subsection (7) (i) in relation to that second ballot paper the provisions of subsection (8) (a), (b) and (c) (i) shall apply, and no further ballot paper shall be delivered to the elector.

- **Repeal of sections 71-74 of the Act.**
- **Amend section 76 of the Act appropriately to reflect the repeal of sections 71-74.**
- Amend Section 44A (3) (a) of the Representation of the People Act by deleting the word “three” and by substituting therefor the word “four”, and by deleting the word “Committee” and by substituting therefor the word “Commission”.
- Amend Section 44A (5) of the Representation of the People Act by deleting the words “four fifths” and by substituting therefor the word “five-sixth”.
- **Postponement of Elections**

It is recommended that Section 20 of the Representation of the People Act be amended to read:

20 – (1.1) where at any time between the making of any proclamation under subsection (1) of section 19 and the day appointed by such proclamation for the holding of the poll at any election the Governor-General in Council is satisfied that it is expedient so to do by reason of–

- (a) Her Majesty’s government having become engaged or being likely to become engaged in any war; or
- (b) The occurrence of any earthquake, hurricane, flood, fire, outbreak of pestilence or outbreak of infectious disease or other calamity whether similar to the foregoing or not; or
- (c) The proclamation of any state of emergency under the Emergency Powers Act; or

(1.2) the Governor General advised by the Constituted Authority is satisfied that it is expedient so to do by reason of –

- (d) The likelihood that the official lists for all constituencies for any particular constituency will not be printed before the day appointed under section 19 for the holding of the poll or that any essential electoral supplies or materials will not be available in adequate quantities upon such day; or

- (e) Riot, open violence or other civil disturbance resulting in such interruption, obstruction, obstruction or abandonment of the electoral process as to prejudice the holding of a fair election,

he may by proclamation adjourn the holding of the poll to some other day specified in such proclamation not being more than thirty days after the day specified in the proclamation under section 19.

- (2) Any proclamation under subsection (1) made pursuant to the provisions of paragraph (c), (d) or (e) of sub-section (1) may be expressed to apply only to such constituencies as are specified in such proclamation in which event the poll shall be taken in any constituencies not so specified upon the day appointed for the taking of the poll under section 19.
- (3) Where any proclamation is made under this section the writs for all constituencies to which such proclamation applies shall be deemed to have been amended by the substitution for the day specified in such writs as being the day for the holding of the poll of the day so specified in such proclamation.
- (4) Where any proclamation under this section is made before the day which would have been nomination day if such proclamation had not been made, nomination day shall be deemed to have been adjourned to the twenty-third day next before the day to which the holding of the poll is adjourned by such proclamation.

Provided that if such twenty-third day is Sunday or a public holiday nomination day shall be deemed to be adjourned to the first day not being Sunday or a public holiday after such twenty-third day.

- (5) Where any proclamation is made under this section after nomination day the adjournment by such proclamation of the day upon which the poll is taken shall in no way affect the validity of any nomination validly made upon nomination day and no other nomination shall be made.
- (6) Where any proclamation is made under this section subsequent to the day on which members of the regular force in the Jamaica Defence Force or members of the Jamaica Constabulary Force or Special Constables or Election Officers, vote in accordance with any provisions of this Act which provides for voting by such persons upon some day other than an election day, the votes cast by such members of the Regular Force in the Jamaica Defence Force or the Jamaica Constabulary Force or Special Constables or Election Officers, as the case may be, shall be preserved by such person and in such manner as may be prescribed until the day next but two before the day on which the poll is taken in accordance with the provisions of this section, and upon such day shall be dealt with as if such had been the day

next but two before the day originally appointed under section 19 for the holding of the poll.