

THE ELECTORAL COMMISSION (INTERIM) ACT
(Act of 2006)

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A BILL

ENTITLED

AN ACT to Repeal the Representation of the People (Interim Electoral Reform) Act and to make temporary provision for the administration of the Representation of the People Act by an Electoral Commission and a Director of Elections and to provide for connected matters.

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BE IT ENACTED by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the authority of the same, as follows:—

1. This Act may be cited as the Electoral Commission (Interim) Act, 2006. Short title.

2.—(1) In this Act— Interpretation.

“candidate” means a person who is nominated as a candidate for election to serve—

(a) as a member of the House of Representatives;

(b) as mayor of a municipality; or

(c) on the Council of the Kingston and St. Andrew Corporation or on a Parish Council;

“Commission” means the Electoral Commission of Jamaica established under section 4;

“Committee” means the Committee constituted under section 8;

“Director” means the Director of Elections appointed under section 7;

“Minister” means the Minister responsible for electoral matters.

(2) The Director and the officers appointed under section 8 shall be election officers for purposes of the Representation of the People Act.

Duration of this Act.

3. This Act shall continue in force until provision is made in the Constitution of Jamaica for the establishment of an Electoral Commission in terms which preclude the alteration of that provision otherwise than in accordance with the procedures prescribed by, or in relation to section 49(3) of the Constitution and shall then expire.

Establishment of the Electoral Commission of Jamaica.

4.—(1) There shall be established for the purposes of this Act, and during the continuance in force of this Act, a commission of Parliament which shall be known as the Electoral Commission of Jamaica.

First Schedule.

(2) The provisions of the First Schedule shall have effect as to the constitution and procedure of the Commission and otherwise in relation thereto.

Objects of the Commission.

5. The objects of the Commission shall be to safeguard the democratic foundations of Jamaica by enabling eligible electors to elect, through free and fair elections, their representatives to govern Jamaica.

Functions of the Commission.

6.—(1) The functions of the Commission shall be to—

(a) establish policies for governing the registration of electors;

(b) give directions to the Director on the performance of his functions under the Representation of the People Act;

- (c) conduct—
 - (i) general elections or by-elections as the case may require, of members to serve—
 - (A) in the House of Representatives;
 - (B) on the Council of the Kingston and St. Andrew Corporation or any Parish Council; or
 - (C) as mayor of a municipality;
 - (ii) referenda;
- (d) compile and maintain the register of eligible electors;
- (e) verify the identity of every eligible elector;
- (f) prepare the official list of electors in accordance with the Representation of the People Act;
- (g) approve political parties eligible to receive state funding with respect to any or all aspects of the electoral process;
- (h) administer electoral funding and financial disclosure requirements;
- (i) monitor election expenditure by candidates or their official agents;
- (j) advise Parliament on the number of constituencies into which Jamaica should be divided;
- (k) determine polling divisions and constituencies;
- (l) prepare and execute programmes of public education with a view to informing the public about the electoral process and carry out media briefings on such occasions as may be necessary;
- (m) conduct research on electoral matters and publish materials to enhance the electoral process;
- (n) provide leadership and develop expertise in electoral matters;

- (o) establish entities or mechanisms to provide services and products necessary for—
- (i) the conduct of elections;
 - (ii) the identification of persons;
 - (iii) the verification of residence; and
 - (iv) such other matters as may be required in relation to the functions of the Commission.

(2) Where the Director refuses to comply with the directions of the Commission given under paragraph (b) of subsection (1), he shall be liable to be removed from office by the Commission.

(3) In making a decision in the exercise of its functions under this Act, the Commission shall observe standards of procedural fairness, act in a timely fashion and observe the rules of natural justice.

(4) Without prejudice to the generality of subsection (3), the Commission shall—

- (a) consult with persons who are or are likely to be affected by the decision;
- (b) give to such persons an opportunity to make submissions and to be heard by the Commission;
- (c) have regard to the evidence adduced at any such hearing and to the matters contained in any such submission;
- (d) seek to ascertain the truth and accuracy of information presented to it;
- (e) have regard to the need for impartiality and fairness; and
- (f) encourage respect for the rule of law.

Appointment
and functions
of the
Director.

First
Schedule.

7.—(1) There shall be a Director of Elections (hereinafter referred to as the Director) who shall be appointed by the Governor-General in accordance with paragraph 1 of the First Schedule hereto.

(2) The Director shall be responsible to the Commission for—

- (a) the day-to-day operation of the Electoral Office of Jamaica, including the training and promotion of staff;
- (b) taking measures to reduce the risk of violations of confidentiality;
- (c) the proper management and security of enumeration and related exercises;
- (d) the taking of polls and the conduct of referenda.

(3) The Director shall perform the functions of the Chief Electoral Officer under the Representation of the People Act and, in lieu of that Officer, during the continuance in force of this Act, shall have all the powers and duties appertaining to that office under that Act.

8.—(1) The Commission may appoint and employ at such remuneration and subject to such terms and conditions as may be approved by the Committee, such officers, agents and employees as it thinks necessary to assist the Director in the discharge of his duties under this Act so, however, that no salary in excess of the prescribed rate per annum shall be assigned to any post without the prior approval of the Committee.

Appointment
of officers,
agents and
employees.

(2) The Committee shall consist of—

- (a) the Speaker, as Chairman;
- (b) three members of the House appointed by the Prime Minister; and
- (c) three members of the House appointed by the Leader of the Opposition.

(3) For the purposes of subsection (1), the “prescribed rate” means a rate of two million five hundred thousand dollars per annum or such higher rate as the Committee may, upon the advice of the Commission, by order, prescribe.

(4) Any order made under subsection (3) shall be subject to negative resolution of the House of Representatives.

(5) The Governor-General, may, subject to such conditions as he may impose, approve the appointment of any officer in the service of the Government to any office with the Commission and any public officer so appointed shall, in relation to pension, gratuity or other allowance, and in relation to other rights as a public officer, be treated as continuing in the service of the Government.

Oath of
secrecy.

9. Every person appointed to the staff of the Commission shall, before he performs any function assigned to him under or by virtue of this Act, take and subscribe an oath to be administered by the Commission, in the form set out in the Second Schedule.

Second
Schedule.

Pension
Scheme and
other
benefits.

10.—(1) The Commission may, with the approval of the Committee, make regulations establishing schemes for pension, gratuities and other retiring benefits in respect of the Director, the members and employees of the Commission; and such regulations may include provision for the grant of benefits to the dependants or the legal personal representatives of the Director, members or employees.

(2) Whenever the Commission is satisfied that it is equitable for any regulations made under this section to be given retrospective effect in order to confer a benefit upon or remove a disability attaching to any person, the regulations may be given retrospective effect for that purpose.

Designations
by
Commission.

11.—(1) During the continuance in force of this Act the provisions of sections 11, 64, 65, 66, 67 and 68 of the Representation of the People Act, in so far as those provisions relate to the appointment by the Governor-General of enumerators, returning officers, election clerks, substitute election clerks, presiding officers and poll clerks, shall not have effect.

(2) The functions of enumerators, returning officers, election clerks, substitute election clerks, presiding officers and poll clerks, respectively, under the Representation of the People Act shall, during the continuance in force of this Act, be performed, in lieu of those

enumerators, officers or clerks, by persons appointed and designated for the purpose by the Commission.

(3) Any person appointed and designated by the Commission to carry out any function pursuant to this section shall take and be bound by the like oath or affirmation as would be required of persons appointed by the Governor-General under section 11, 64, 65, 66, 67, or 68 of the Representation of the People Act, as the case may be.

12. The Director and the selected Commissioners shall be disqualified from voting at any—

Disqualification of Director and selected Commissioners from voting in elections.

(a) election of—

(i) a member to serve in the House of Representatives or on the Council of the Kingston and St. Andrew Corporation or any Parish Council;

(ii) a mayor of a municipality; or

(b) referendum.

13. The funds and resources of the Commission shall consist of—

Funds of the Commission.

(a) such sums as may, from time to time, be placed at its disposal by Parliament; and

(b) all other sums and other property which may, in any manner, become payable to or vested in the Commission in respect of any matter incidental to its functions.

14. The revenues of the Commission shall be applied for the purposes authorized by this or any other law in relation to its functions.

Application of revenues.

15.—(1) All moneys of the Commission not immediately required to be expended in meeting any of its obligations or discharging of any of its functions may be invested in securities issued or guaranteed by the Government.

Power to invest moneys.

(2) The Commission may, with the approval of the Minister after consultation with the Minister responsible for finance, sell all or any of the securities referred to in subsection (1).

Accounts and
Audit.

16.—(1) The Commission shall keep proper accounts and other records in relation to its business and shall prepare annually a statement of accounts in accordance with directions issued or regulations made under section 24A of the Financial Administration and Audit Act.

(2) The accounts of the Commission shall be audited by the Auditor-General.

Exemption
from taxes
and duties.

17.—(1) The income of the Commission shall be exempt from income tax.

(2) All instruments executed by or on behalf of the Commission shall be exempt from stamp duty.

(3) Any transfer by the Commission of any property belonging to it or of any right or interest created in or otherwise with respect to any such property, shall be exempt from transfer tax.

(4) No customs duty, tax payable under the General Consumption Tax Act or other similar impost shall be payable upon any article imported into Jamaica or taken out of bond in Jamaica by the Commission and shown to the satisfaction of the Commissioner of Customs to be required for the use of the Commission in the performance of its functions.

Annual
report and
estimates.

18.—(1) The Commission shall, within six months after the end of each financial year or within such longer period as the House of Representatives may by resolution in special circumstances approve, cause to be made and submit to the Committee a report—

- (a) dealing generally with the proceedings and activities of the Commission during the preceding financial year; and
- (b) containing such information relating to the proceedings and policy of the Commission as can be made public without detriment to the interests of the Commission.

(2) The Committee shall cause a copy of the report together with the annual statement of accounts and the auditor's report thereon to be laid on the Table of the House of Representatives.

(3) The Commission shall, as soon as may be practicable before the 31st day of December in each year, submit to the House of Representatives for approval, its estimates of revenue and expenditure in respect of the period commencing on the 1st day of April in the following year and ending on the 31st day of March of the subsequent year, and shall, during that year, submit to the House of Representatives for approval any estimate of further expenditure as may become necessary.

19.—(1) The Commission shall be responsible to Parliament for matters concerning the responsibilities and activities of the Commission and, accordingly, the Commission shall keep the Leader of the House fully informed of all matters, and shall furnish him with such information as he may request with respect to any particular matter.

Commission's
responsibility
to
Parliament.

(2) The Commission shall report at least once each year to Parliament through the Leader of the House who shall lay the report of the Commission in Parliament within four weeks of receipt of the report.

20. The Representation of the People (Interim Electoral Reform) Act is hereby repealed.

Repeal.

FIRST SCHEDULE (Sections 4 and 7)

- Constitution of Commission.
- 1.—(1) The Commission shall consist of nine members appointed by the Governor-General by instrument in writing, as follows—
- (a) two members shall be appointed on the advice of the Prime Minister and two members on the advice of the Leader of the Opposition; and such members shall hereinafter be referred to as "nominated Commissioners";
 - (b) subject to sub-paragraph (2), four members shall be appointed by the Governor-General, after consultation with the Prime Minister and the Leader of the Opposition; and such members shall hereinafter be referred to as "selected Commissioners"; and
 - (c) the Director of Elections, shall be appointed on the recommendation of the eight Commissioners appointed under sub-paragraphs (a) and (b) and shall be eligible to vote at meetings of the Commission.
- (2) The selected Commissioners shall elect one of their number to be Chairman of the Commission and so inform the Governor-General.
- Process of appointment.
- 2.—(1) The process of appointment of the Commissioners shall be as follows—
- (a) the Governor-General shall commence the process of consultation with the Prime Minister and the Leader of the Opposition three months prior to the date of expiry of the appointment of the Commissioners;
 - (b) the Prime Minister and the Leader of the Opposition shall submit their nominations to the Governor-General no later than six weeks after the commencement of the consultation process;
 - (c) the agreement with respect to the selected Commissioners to be appointed shall be concluded before the date of expiry of the appointment of the existing Commissioners.
- (2) If for any reason new Commissioners cannot be appointed at the expiry date, the existing Commissioners shall continue in office for a period no longer than ninety days.
- Qualification for membership.
- 3.—(1) No person shall be qualified to be a nominated Commissioner or the Director of Elections if he—
- (a) is not a citizen of Jamaica resident in Jamaica;
 - (b) has not attained the age of eighteen years;

- (c) is—
- (i) under sentence of death imposed on him by a court in any part of the Commonwealth; or
 - (ii) serving a sentence of imprisonment by whatever name called of or exceeding six months, imposed on him by such a court or substituted by a competent authority for some other sentence so imposed; or
 - (iii) serving a sentence of imprisonment the execution of which is suspended;
- (d) is disqualified for registration as an elector for elections to the House of Representatives by or under any law for the time being in force in Jamaica because he has been convicted of an offence connected with the election of members of the House of Representatives or of any local authority or body for local purposes;
- (e) is, under any law for the time being in force in Jamaica, certified to be insane or otherwise adjudged to be of unsound mind or detained as a criminal lunatic;
- (f) is, by virtue of his own act, under any acknowledgement of allegiance, obedience or adherence to a foreign power or state;
- (g) holds or is acting in the office of Judge of the Supreme Court or Judge of the Court of Appeal;
- (h) is a member of the Jamaica Defence Force or the Constabulary Force;
- (i) is a party to, or is partner in a firm or a director or manager of a company which to his knowledge is a party to, any contract with the Government of Jamaica for or on account of the public service or any contract directly or indirectly with any Political Party, and has not previously disclosed to the Governor-General the nature of such contract and his interest or the interest of such firm or company therein;
- (j) has been adjudged or otherwise declared bankrupt under any law in force in any part of the Commonwealth and has not been discharged; or
- (k) has at any time been convicted of any offence involving moral turpitude or dishonesty.

(2) No person shall be qualified to be a selected Commissioner or the Director if he—

- (a) is a Member of Parliament or a member of any local authority;
- (b) has been a Member of Parliament or a member of any local authority (or has been a candidate for election as a Member of Parliament or as a member of any local authority during a period of seven years prior to the date of appointment as a selected member or as Director);
- (c) is disqualified from being a nominated member under sub-paragraph (1).

Duration of appointment. 4.—(1) Subject to the provisions of this Schedule, the appointment of a selected Commissioner and the Director shall be for a period of seven years.

(2) Subject to sub-paragraph (3), the nominated Commissioners shall be appointed for four years.

(3) The Prime Minister and the Leader of the Opposition may, at any time during the period of appointment of a nominated Commissioner, advise the Governor-General of a change in their respective nominees.

(4) All members of the Commission shall be eligible for reappointment.

(5) The Office of a member of the Commission shall become vacant—

- (a) if he resigns his office;
- (b) in the case of a selected Commissioner, if his appointment is revoked by a resolution passed by the majority of all the members of the Commission having a right to vote or a resolution of each House of Parliament approved by not less than two-thirds of all the members of that House;
- (c) if any circumstances arise that, if he were not a member would cause him to be disqualified for appointment; and
- (d) in the case of the Director, if he is removed from office by a vote supported by not less than six Commissioners including at least three selected Commissioners.

(6) If the office of a member of the Commission becomes vacant—

- (a) any other person who is qualified to be a member of the Commission may be appointed to be a member of the Commission in accordance with the provisions of paragraph (1);
- (b) the duration of the term of office of such member shall be the unexpired period of the term of office of the member whose office became vacant.

5.—(1) The Commission shall meet as and when necessary for the performance of its functions under this Act and such meetings may be held at such places and times and on such days as the Commission may determine. Procedure and meetings.

(2) The Chairman may at any time call a special meeting of the Commission and shall call a special meeting within seven days of the receipt of a written request for that purpose addressed to him by any two members of the Commission.

(3) The Chairman or his designate shall preside at all meetings of the Commission at which he is present and in the case of his absence from any meeting the members present and constituting a quorum shall elect one of the selected members to act as Chairman at that meeting.

(4) The quorum at any meeting shall be five Commissioners, or in the case of a meeting of a subcommittee of the Commission, the quorum shall be three Commissioners.

(5) Every decision of the Commission shall be by a majority vote and where the voting is equal on any matter the Chairman shall have a casting vote in addition to his original vote.

(6) Subject to the provisions of this paragraph, the Commission shall have power to regulate its own proceedings.

(7) The validity of any proceedings of the Commission shall not be affected by any vacancy amongst the members or by any defect in the appointment of a member.

6.—(1) If, in relation to a matter being considered at a meeting of the Commission any member or the member's spouse is directly or indirectly interested in a private capacity, that member shall, as soon as is practicable after the commencement of the meeting, declare such interest and shall not, unless the Commission or otherwise directs, take part in any consideration or discussion of, or vote on any question touching such matter. Disclosure of interest.

(2) A disclosure of interest made under sub-paragraph (1) shall be recorded in the minutes of the meeting at which it is made.

(3) A person who contravenes sub-paragraph (1) shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding twenty thousand dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

7.—(1) Subject to sub-paragraphs (2) and (4) the members of the Commission, other than the Director of Elections, shall receive such emoluments and be subject to such other terms and conditions of service as may from time be prescribed by or under any law or by resolution of the House of Representatives. Remuneration of members.

(2) The emoluments payable to a member shall not be more than the emoluments which may, from time to time, be payable to a Puisne Judge.

(3) The emoluments, terms and conditions of service of the Commissioners shall not be altered to their disadvantage during the period of their appointment or reappointment, as the case may be.

(4) Where a Commissioner is otherwise employed and paid from the public purse, he may be entitled to any additional benefit that would bring the amount of his emoluments up to that of a Puisne Judge.

(5) If a Commissioner is not entitled to any benefit, he may be paid for attendance at meetings at the rate established by the Ministry responsible for finance for statutory bodies.

Resignation. 8.—(1) Any member, other than the Chairman, may at any time resign his office by instrument in writing addressed to the Governor-General and transmitted through the Chairman; and from the date of receipt by the Governor-General of such instrument such member shall cease to be a member.

(2) The Chairman may at any time resign his office by instrument in writing addressed to the Governor-General; and such resignation shall take effect as from the date of the receipt by the Governor-General of the instrument.

Authentication of seal and documents. 9.—(1) The seal of the Commission shall be authenticated by the signatures of the Chairman and another member authorized by the Commission to act in that behalf.

(2) All documents, other than those required by law to be under seal, made by, and all decisions of, the Commission may be signified under the hand of the Chairman or any other member authorized by the Commission to act in that behalf.

Publication of membership. 10. The names of all members as first appointed and every change in the composition of the Commission shall be published in the *Gazette*.

Protection of Commission. 11. Notwithstanding anything to the contrary, no act done or proceeding taken under this Act by the Commission shall be questioned on the ground of any omission, defect or irregularity not affecting the merits of the case.

Protection of members. 12.—(1) No member shall be personally liable for any act or default of the Commission done or omitted to be done in good faith in the course of the operation of the Commission.

(2) Where any member is exempt from liability by reason only of the provisions of this paragraph the Commission shall be liable to the extent that it would be if the said member were an employee or agent of the Commission.

13. The office of Commissioner shall not be a public office for the purpose of Chapter V of the Constitution of Jamaica. Office of Commissioner not public office.

14. Where, pursuant to paragraph 1 or paragraph 2, the Governor-General is directed to act on the advice of or after consultation with the Leader of the Opposition and— Provisions applicable when there is no Leader of Opposition.

- (a) there is no person holding the office of Leader of the Opposition; or
- (b) the holder of that office is unwilling or, by reason of his illness or absence from Jamaica, unable to perform his functions in that regard, the Governor-General shall act as if the reference in those paragraphs to the Leader of the Opposition were a reference to such person as the Governor-General, in his discretion, considers appropriate.

SECOND SCHEDULE (section 9)

Oath to be taken by persons appointed to assist the Electoral Commission

I....., do swear that I will faithfully perform any functions assigned to me under the Electoral Commission (Interim) Act, and I will not, on any account, at any time whatsoever, except in so far as provisions of the Act authorize, directly or indirectly reveal any information or the nature or contents of any documents communicated to me in the performance of any functions assigned to me by virtue of the Act.

So help me God.

MEMORANDUM OF OBJECTS AND REASONS

The Electoral Advisory Committee was established in 1979 under the Representation of the People (Interim Electoral Reform) Act. The Electoral Advisory Committee, in two reports submitted to the House of Representatives in 2004 and 2005, recommended the establishment of an Electoral Commission to replace the Electoral Advisory Committee and the appointment of a Director of Elections to perform the functions of the Chief Electoral Officer under the Representation of the People Act.

The House of Representatives gave unanimous approval for the implementation of the proposal.

The recommendations were approved by the Cabinet.

This Bill seeks to give effect to the recommendations.

The Bill is, as the title suggests, an interim measure pending the entrenchment of the provisions in the Constitution.

The Bill provides for appointment of the following members—

- (a) four nominated members;
- (b) four selected members; and
- (c) a Director of Elections.

The Bill establishes the Electoral Commission of Jamaica as a Commission of Parliament and outlines the functions of the Commission which include—

- (a) establishing policies for governing the registration of electors;
- (b) giving directions to the Director on the performance of his functions under the Representation of the People Act;
- (c) conducting general elections or by-elections as the case may require and referenda;
- (d) compiling and maintaining the register of eligible electors;
- (e) being responsible to Parliament for matters concerning the activities of the Commission; and
- (f) providing that the responsible Minister under the Act is the Minister responsible for electoral matters and who should be kept informed of all matters relating to the Commission.

The Bill also provides that—

- (a) the Director shall perform the functions of the Chief Electoral Officer under the Representation of the People Act and is vested with the powers and duties of such officer;

- (b) the selected members of the Commission and the Director are disqualified from voting in elections or to serve in the House of Representatives or on the Council of the Kingston and St. Andrew Corporation or any Parish Council.

Provision is also made for appointment of persons designated by the Commission to execute the functions of enumerators, returning officers, election clerks, substitute election clerks, presiding officers and poll clerks under the Representation of the People Act.

PETER D. PHILLIPS
Minister of National Security.

A BILL

ENTITLED

AN ACT to Repeal the Representation of the People (interim Electoral Reform) Act and to make temporary provision for the administration of the Representation of the People Act by an Electoral Commission and a Director of Elections and to provide for connected matters.

**As introduced by the Honourable Minister of
National Security**

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