

BILL No. 7 of 2001

Wednesday 30<sup>th</sup> May, 2001

PARLIAMENT OFFICE

Public Buildings  
Georgetown  
Guyana.

20<sup>th</sup> May, 2001

The following Bill which will be introduced in the National Assembly is published for general information.

F. A. Narain,  
Clerk of the National Assembly



GUYANA

BILL No. 7 of 2001  
CONSTITUTION (AMENDMENT) (No. 4) BILL 2001

ARRANGEMENT OF SECTIONS

SECTION

1. Short title.
2. Repeal and re-enactment of the Preamble of the Constitution.
3. Alteration of the Constitution.
4. Repeal and re-enactment of article 13 of the Constitution.
5. Repeal and re-enactment of article 14 of the Constitution.
6. Repeal and re-enactment of article 15 of the Constitution.
7. Repeal and re-enactment of article 16 of the Constitution.
8. Repeal and re-enactment of article 17 of the Constitution.
9. Alteration of article 118 of the Constitution.
10. Alteration of Chapter XI of the Constitution.
11. Alteration of article 123 of the Constitution.
12. Alteration of article 126 of the Constitution.
13. Alteration of article 127 of the Constitution.
14. Alteration of article 128 of the Constitution.
15. Insertion of new article 128A in the Constitution.
16. Alteration of article 146 of the Constitution.
17. Alteration of article 153 of the Constitution.
18. Alteration of article 197 of the Constitution.
19. Alteration of article 198 of the Constitution.
20. Alteration of article 199 of the Constitution.
21. Alteration of article 203 of the Constitution.
22. Alteration of articles 218, 219 & 220 of the Constitution.
23. Insertion of new article 222A in the Constitution.
24. Alteration of article 223 of the Constitution.

Second Schedule

Third Schedule

**A BILL  
Intituled**

AN ACT to alter the Constitution in accordance with Articles 66 and 164.

A. D. 2001      Enacted by the Parliament of Guyana:-

Short title.                                    1.        This Act may be cited as the Constitution (Amendment)  
    (No. 4) Act 2001.

Repeal and                                    2.        The Preamble of the Constitution is hereby repealed and the  
re-enactment following Preamble substituted therefor -  
of the  
Preamble of  
the  
Constitution.

“PREAMBLE

WE, THE GUYANESE PEOPLE,

Proud heirs of the indomitable will of our forebears, in a spirit of reconciliation and cooperation, proclaim this Constitution in order to:

Safeguard and build on the rich heritage, won through tireless struggle, bequeathed us by our forebears;

Affirm our sovereignty, our independence and our indissolubility;

Forge a system of governance that promotes concerted effort and broad-based participation in national decision-making in order to develop a viable economy and a harmonious community based on democratic values, social justice, fundamental human rights, and the rule of law;

Celebrate our cultural and racial diversity and strengthen our unity by eliminating any and every form of discrimination;

Value the special place in our nation of the Indigenous Peoples and recognise their right as citizens to land and security and to their promulgation of policies for their communities;

Acknowledge the aspirations of our young people who, in their own words, have declared that the future of Guyana belongs to its young people. who aspire to live in a safe society which respects their dignity, protects their rights, recognises their potential, listens to their voices, provides opportunities, ensures a healthy environment and encourages people of all races to live in harmony and peace and affirm that their declaration will be binding on our institutions and be a part of the context of our basic law;

Demonstrate our commitment to protect our natural environment and endowment;

Create a republican community practically aware that the finances, industry, communications, education, business and technology of the world are global factors affecting all in which all must engage and from which all must benefit.

As citizens of Guyana, we adopt these fundamental laws and make provision for their amendment to reflect future changes in our society, inspired by our collective quest for a perfect nation, whose characteristics include the commitments, concepts, and other principles proclaimed in this preamble.

May God protect our people.”.

Alteration of the Constitution.

3. The Constitution is hereby altered as follows-

- (a) in article 4, by the insertion immediately after the words “The Golden Arrow Head”, the words “as set out in the Second Schedule”;
- (b) in article 5, by the insertion immediately after the word “Constitution”, the words “as set out in the Second Schedule”;
- (c) in article 6, by the insertion immediately after the words “Green Land of Guyana”, the words “as set out in the Second Schedule”;
- (d) by the insertion immediately after article 6 of the following as article 6A -
 

“The Pledge. 6A. The National Pledge of the State is the pledge as set out in the Second Schedule”;
- (e) in article 7, by the insertion immediately after the word “anthem”. the words. “.the national pledge”.

Second Schedule

Repeal and re-enactment article 13 of the Constitution.

4. Article 13 of the Constitution is hereby repealed and the following article substituted therefor -

“Objective of political System.

13. The principal objective of the political system of the State is to establish an inclusionary democracy by providing increasing opportunities for the participation of citizens, and their organisations in the management and decision-

making processes of the State, with particular emphasis on those areas of decision-making that directly affect their well-being.”.

Repeal and re-enactment of article 14 of the Constitution.

5. Article 14 of the Constitution is hereby repealed and the following article substituted therefor -

“Goal of economic development.

14. The goal of economic development includes the objective of creating, promoting and encouraging an economic system capable of achieving and maintaining sustainable competitive advantage in the context of a global competitive environment, by fostering entrepreneurship, individual and group initiative and creativity, and strategic alliances with domestic and global business partners in the private sector.”.

Repeal and re-enactment of article 15 of the Constitution.

6. Article 15 of the Constitution is hereby repealed and the following article substituted therefor -

“Further goal of economic development.

15. The goal of economic development includes the objective of laying the material basis for the greatest possible satisfaction of the people’s growing material, cultural and intellectual requirements, as well as the dynamically stable development of their personality, creativity, entrepreneurial skills, and cooperative relations in a plural society. The State shall intervene to mitigate any deleterious effects of competition on individuals or groups of individuals.”.

Repeal and re-enactment of article 16 of the Constitution.

7. Article 16 of the Constitution is hereby repealed and the following article substituted therefor -

“State to foster forms of development.

16. The State shall foster the development of such relevant forms of cooperation and of business entities as are seen to be supportive of the goals of economic development as stated in articles 14 and 15.”.

Repeal and re-enactment of article 17 of the Constitution.

8. Article 17 of the Constitution is hereby repealed and the following article substituted therefor -

“Private enterprise.

17. Privately owned economic enterprises are recognised, and shall be facilitated in accord with their conformity with the aims and objectives stated or implied in articles 13, 14, 15 and 16.”.

Alteration of  
article 118  
of the  
Constitution.

9. Article 118(2) of the Constitution is hereby altered by the deletion of the words “,including the Auditor General”.

Alteration of  
Chapter XI of  
the Constitution.

10. Chapter XI of the Constitution is hereby altered by the insertion immediately below the heading “The Supreme Court of Judicature” of the following article-

“Independent Judiciary. 122A. (1) All courts and all persons presiding over the courts shall exercise their functions independently of the control and direction of any other person or authority; and shall be free and independent from political, executive and any other form of direction and control.

(2) Subject to the provisions of articles 199 and 201, all courts shall be administratively autonomous and shall be funded by a direct charge upon the Consolidated Fund; and such courts shall operate in accordance with the principles of sound financial and administrative management.”.

Alteration of  
article 123 of the  
Constitution.

11. Article 123 of the Constitution is hereby altered by the insertion immediately after paragraph (3) thereof of the following paragraphs-

“(4) Parliament may make such provision as it deems fit authorising any court established, or to be established, as the final court of appeal for the Caribbean to be the final court of appeal for Guyana.

(5) Where a court referred to in paragraph (4) is established and becomes the final Court of Appeal for Guyana, such court shall remain the final Court of Appeal for Guyana, unless Parliament, by a vote of no less than two-thirds of all the elected members of the Assembly, makes provision for Guyana to withdraw from such court.”.

Alteration of  
article 126 of the  
Constitution.

12. Article 126 of the Constitution is hereby altered by the substitution for the words beginning with the word “Judge” and ending with the words “Puisne Judge.” of the words “ “Judge” includes the Chancellor, the Chief Justice, a Justice of Appeal, a Puisne Judge and a part-time Judge.”.

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Alteration of  
article 127 of the  
Constitution.

13. Article 127 of the Constitution is hereby altered as follows-

(a) by the substitution for paragraph (1) thereof of the following paragraph -

“(1) The Chancellor and the Chief Justice shall each be appointed by the President, acting after obtaining the agreement of the Leader of the Opposition:

Provided that if there is no agreement within two months the President shall make the appointment taking into consideration the views of the Leader of the Opposition.”;

(b) by the substitution in paragraph (2) thereof for the words “may be appointed by the President” of the words “shall be appointed by the President after meaningful consultation with the Leader of the Opposition”.

Alteration of  
article 128 of  
the Constitution.

14. Article 128 of the Constitution is hereby altered as follows-

(a) by the substitution for paragraph (1) thereof, of the following paragraph -

“(1) The Judges, other than the Chancellor and the Chief Justice, shall be appointed by the President who shall act in accordance with the advice of the Judicial Service Commission.”;

(b) in paragraph (2) thereof, by the substitution for the words “the President, acting in accordance with the advice of the Judicial Service Commission may,” of the words “the President shall act in accordance with the advice of the Judicial Service Commission and” and by the substitution for the colon at the end of a full stop;

(c) by the deletion of the proviso to paragraph (2).

Insertion of  
new article 128A  
in the  
Constitution.

15. The Constitution is hereby altered by the insertion immediately after article 128 of the following article -

“Appointment  
of part-time  
Judges.

128A (1) Part-time Judges may be appointed by the President, who shall act in accordance with the advice of the Judicial Service Commission.

(2) Parliament may by law determine the terms and conditions of appointment of part-time Judges.”.

Alteration of article 146 of the Constitution.

16. Article 146 of the Constitution is hereby altered as follows -

(a) in paragraph (2) -

(i) by the substitution for the full stop at the end of subparagraph (c) of a semicolon;

(ii) by the insertion of the following subparagraph immediately after subparagraph (c)-

“(d) that imposes restrictions upon any person, institution, body, authority or political party from taking any action or advancing, disseminating or supporting any idea, which may result in racial or ethnic divisions among the people of Guyana.”;

(b) by the insertion immediately after paragraph (2) of the following paragraph -

“(3) Freedom of expression in this article does not relate to hate speeches or other expressions, in whatever form, capable of exciting hostility or ill-will against any person or class of persons.”.

Alteration of article 153 of the Constitution.

17. Article 153 of the Constitution is hereby altered as follows -

(a) by the substitution for paragraph (1) of the following paragraph -

(1) “Subject to the provisions of paragraph (6), if any person, including a person acting on behalf of another who is not acting in his or her own name, or a person acting on behalf of a group or an association acting on behalf of its members, alleges that any of the provisions of articles 138 to 151 (inclusive) has been, is being, or is likely to be contravened in

relation to him or her (or in the case of a person who is detained, if any other person alleges such a contravention in relation to the detained person) then, without prejudice to any other action with respect to the same matter which is lawfully available, that person or association (or that other person) may apply to the High Court for redress.”;

- (b) by the substitution immediately after the word “(inclusive)” in paragraph (2), for the colon, of a full stop;
- (c) by the deletion of the proviso to paragraph (2).

Alteration of article 197 of the Constitution.

18. Article 197 of the Constitution is hereby altered as follows -

- (a) by the substitution for paragraph (2) of the following paragraphs -

“(2)A person appointed to the office of Judge on or after the commencement of this paragraph shall vacate that office on attaining -

- (a) in the case of a Puisne Judge, the age of sixty-five years; and
- (b) in the case of any other Judge, the age of sixty-eight years.

(2A) Paragraph (2) as it stood on the date immediately before its alteration shall apply to a judge appointed on or before that date except that provisos (i) to (v), inclusive, shall be deemed to be deleted on the said date.”;

- (b) by the insertion in paragraph (3) immediately after the word “misbehaviour” of the words “or for persistently not writing decisions or for continuously failing to give decisions and reasons therefor within such time as may be specified by Parliament”;
- (c) by the insertion immediately after paragraph (9) of the following paragraph -



“(10) It is in the interest of the State to provide such terms and conditions of service, including superannuation benefits, for Judges that on retirement there would be no need for them to practise at the Bar.”.

Alteration of article 198 of the Constitution.

19. Article 198 (2) of the Constitution is hereby altered as follows -

- (c) in the opening part, by the deletion of the words “,acting after consultation with the Minority Leader.”;
- (b) by the insertion in subparagraph (a) immediately after the words “any such court” of the words “,acting after meaningful consultation with the Leader of the Opposition”;
- (c) by the substitution in subparagraph (b) for all the words after the words “practice.” of the words “after the National Assembly has meaningfully consulted such bodies as appear to it to represent attorneys-at-law in Guyana and signified its choice of members to the President.”.

Alteration of article 199 of the Constitution.

20. Article 199 of the Constitution is hereby altered by the substitution for paragraph (3) thereof, of the following paragraph -

“(3) This article applies to the office of Commissioner of Title, Magistrate, Director of Public Prosecutions, Deputy Director of Public Prosecutions, Registrar of the High Court, Deputy Registrar of the High Court, Registrar of Deeds, Deputy Registrar of Deeds and to such other offices (not being offices in respect of which provision for the making of appointments is made by any provision of this Constitution other than article 201) connected with the courts of Guyana or for appointment to which legal qualifications are required as may be prescribed by Parliament.”.

Alteration of article 203 of the Constitution.

21. Article 203 of the Constitution is hereby altered as follows -

- (a) by the deletion of paragraphs (1) and (6);
- (b) by the substitution, in paragraph (2) -

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- (i) for the word “Director” of the words “Director of Public Prosecutions (in this Article referred to as “the Director”);
- (ii) for the words “the President, acting in accordance with the advice of the Public Service Commission, tendered as aforesaid,” of the words “the Judicial Service Commission”;
- (c) by the substitution, in the proviso to paragraph (4), for the words “the President, acting after consultation with the Minority Leader” of the words “the Judicial Service Commission”;
- (d) by the substitution in paragraph (5), for the words “Prime Minister or the Chairman of the Public Service Commission” of the words “Chairperson of the Judicial Service Commission” and for the words “Public Service Commission” of the words “Judicial Service Commission”.

Alteration of articles 218, 219, 220 of the Constitution.

22. Articles 218, 219 and 220 of the Constitution are hereby altered by the substitution for the words “Prime Minister” wherever they appear of the words “Minister responsible for finance”.

Insertion of new article 222A in the Constitution.

23. The Constitution is hereby altered by the insertion immediately after article 222 of the following article as article 222A-

“Overarching clause on financial autonomy.

222A. In order to assure the independence of the entities listed in the Third Schedule-

Third Schedule.

- (a) the expenditure of each of the entities shall be financed as a direct charge on the Consolidated Fund, determined as a lump sum by way of an annual subvention approved by the National Assembly after review and approval of the entity’s annual budget as a part of the process of the determination of the national budget;

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- (b) each entity shall manage its subvention in such manner as it deems fit for the efficient discharge of its functions, subject only to conformity with the financial practices and procedures approved by the National Assembly to ensure accountability; and all revenues shall be paid into the Consolidated Fund;
- (c) the terms and conditions applicable to grants and donations destined for the entities shall be approved by, and disbursements shall be made through, such appropriate government agency or department as determined by the National Assembly.”.

Alteration of article  
223 of the  
Constitution.

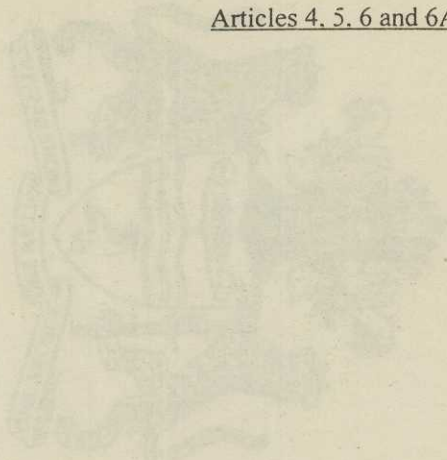
24. Article 223 of the Constitution is hereby altered as follows -
- (a) in article 223 (3) by the substitution for the words “Minister responsible for finance”, of the words “Speaker of the National Assembly”;
  - (b) by the substitution for paragraph (4) of the following paragraph -
    - “(4) In the exercise of his functions under this Constitution, the Auditor General shall not be subject to the direction or control of any person or authority.”;
  - (c) by the insertion immediately after paragraph (4) of the following paragraphs -
    - “(5) The Public Accounts Committee may exercise general supervision over the functioning of the office of the Auditor General in accordance with the Rules, Policies and Procedures Manual for the functioning of the office of the Auditor General as prepared by the Auditor General and approved by the Public Accounts Committee.
    - (6) The Auditor General shall prepare and submit to the Public Accounts Committee reports, on a quarterly basis, on the performance and operation of the office of the Auditor General.

- (7) The Auditor General shall submit annually a copy of an Annual Systems and Financial Audit Report with respect to the office of the Auditor General to the Public Accounts Committee.
- (8) In this article -
- (a) “Public Accounts Committee” means the Public Accounts Committee established by order 70 (2) of the Standing Orders of the National Assembly; and
  - (b) “public accounts of Guyana” includes the accounts of -
    - (i) all central and local government bodies and entities;
    - (ii) all bodies and entities in which the State has a controlling interest; and
    - (iii) all projects funded by way of loans or grants by any foreign State or organisation.”.

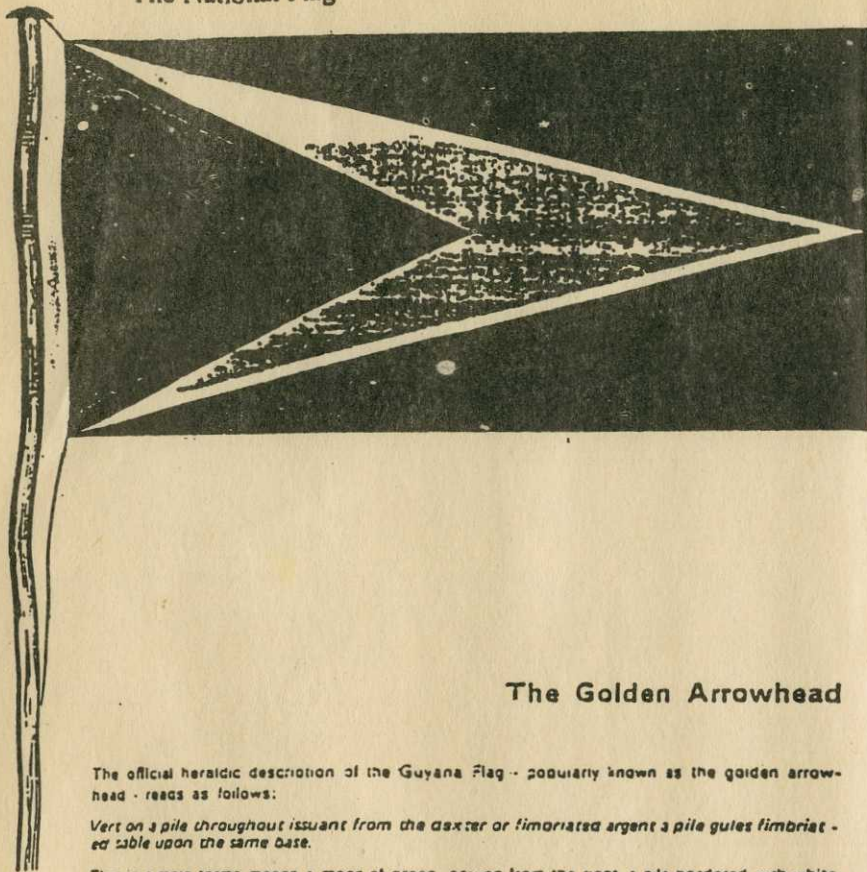
**Second Schedule**

**Articles 4, 5, 6 and 6A**

1. The National Flag
2. The Coat of Arms
3. The National Anthem
4. The National Pledge



## The National Flag



## The Golden Arrowhead

The official heraldic description of the Guyana Flag - popularly known as the golden arrowhead - reads as follows:

*Vert on a pile throughout issuant from the dexter or fimbriated argent a pile gules fimbriated sable upon the same base.*

This in simple terms means a mass of green issuing from the right, a pile bordered with white, a pile of red bordered with black upon the same base.

The design and the colour of the Guyana Flag are interpreted as follows:

The green background symbolises the agricultural and forested nature of Guyana. The white border symbolises its waters and rivers potential. The golden arrow symbolises Guyana's mineral wealth and its forward thrust. The black border, the endurance that will sustain the golden arrow's forward thrust into the future. The red triangle symbolises the zeal and the dynamic task of nation building which lies before this young and independent country.

The Garter King of Arms has described the design as being one of the most significant departures in national flag design in modern times.

The Flag is designed to be of a proportion 3 x 5 on land and 1 x 2 at sea. The colour proportions are green 50%, gold 24%, white 6% and black 1%.



## Guyana Coat-of-Arms


The design of Guyana's Coat of Arms is interpreted as follows:-

The Amerindian head-dress symbolises the Amerindians as the indigenous people of the country. The two diamonds at the side of the head-dress represent the country's mining industry. The helmet is a monarchical insignia. The two jaguars holding a pick-axe, a sugar-cane and a stalk of rice symbolise labour and the two main agricultural industries of the country; sugar and rice. The shield which is decorated with the national flower, the Victoria Regia Lily, is to protect the nation. The three blue wavy lines represent the many waters of Guyana. The Cane Pheasant at the bottom of the shield represents a rare bird for principally in this part of the world.

## GUYANA NATIONAL ANTHEM



*mf* Dear land of Guy-a-na, of ri-vers and plains made rich by the



sun - shine and lush by the rapids. For gem - like and fair be - tween



moun - tains and sea. Your child - ren an - ticipate you, dear land of the free.

Green land of Guyana, our heroes of yore.

Both bondsmen and free, laid their bones on your shore:

This soil they so hallowed, and from them are we.

All sons of one Mother, Guyana the free.

Great land of Guyana, diverse though our strains.

We are born of their sacrifice, heirs of their pain.

'And ours is the glory their eyes did not see —

One land of six peoples, united and free.

Dear land of Guyana, to you will we give

our homage, our service, each day that we live;

God guard you, great Mother, and make us to be

More worthy our heritage — land of the free.

### **The National Pledge**

I pledge myself to honour always the flag of Guyana,  
and to be loyal to my country, to be obedient to the  
laws of Guyana, to love my fellow citizens, and to  
dedicate my energies towards the happiness and  
prosperity of Guyana.

### **Third Schedule**

### **Article 222A**

#### **Entities**

The Ethnic Relations Commission

The Human Rights Commission

The Women and Gender Equality Commission

The Indigenous Peoples' Commission

The Rights of the Child Commission

The Judiciary

The Office of the Auditor General



## EXPLANATORY MEMORANDUM

This Bill seeks to amend the Constitution to give effect to some of the recommendations made by the Constitution Reform Commission in its report dated 20<sup>th</sup> July, 1999.

The Bill contains twenty-three clauses; and except for clauses 2 and 22 which require a simple majority, the remaining clauses of the Bill need the votes of not less than two-thirds majority of all elected members of the National Assembly to amend the Constitution. Clause 1 of the Bill is the short title and clause 2 seeks to replace the present preamble of the Constitution with a new preamble. Clause 3 seeks to insert, as a new feature in a Second Schedule of the Constitution, the Flag of Guyana, the National Anthem, the National Pledge and the Coat of Arms.

Clauses 4, 5, 6 and 7 of the Bill seek to insert new provisions in the Constitution dealing with the objectives of the political system, the goal of economic development and the duty of the state to foster forms of development. Clause 8 seeks to recognise the role of private enterprise in the economic development of Guyana.

Clauses 10, 11, 12, 13, 14 and 15 deal with the judicial system, the objective of which is to ensure the independence of the judiciary. Clause 10 states that the judiciary shall be independent and clause 13 provides for the Chancellor and the Chief Justice to be appointed by the President, after obtaining the agreement of the Leader of the Opposition. To appoint judges to act in these positions there must be meaningful consultation with the Leader of the Opposition. Clause 14 deals with the appointment of Puisne Judges which appointment can be made by the President who must act on the advice of the Judicial Service Commission. Clause 15 deals with the appointment of part-time judges.

Clause 16 seeks to amend the Constitution to authorise Parliament to make laws to restrict any person, political party or other body from spreading ideas or taking action, which may result in racial division in Guyana.

Clause 17 seeks to enlarge the categories of persons or groups who may apply to the High Court for redress for infringement of their constitutional rights.

Clause 18 seeks to provide for the increase in the age of retirement for Puisne Judges, from sixty-two years to sixty-five years; and for the Chancellor, the Chief Justice and other Court of Appeal judges from sixty-five years to sixty-eight years. This new retirement age will only apply to judges appointed after the date of the enactment of this amendment to the Constitution. Clause 18 also seeks to remove the proviso from article 197 thus preventing a grant of extension of tenure of judges who have reached the retirement age. Clause 18 also seeks to make provision for the State to provide conditions of service for judges so that they would not have to resort to private practice. Provisions are also made in this clause authorising the removal of judges for failure to write decisions within a time to be specified by Parliament.

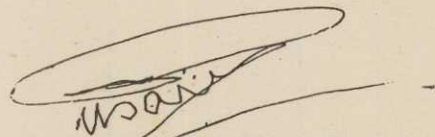
Clause 19 seeks to provide for the appointment of the members of the Judicial Service Commission by the President, after meaningful consultation with the Leader of the Opposition in respect of one member having judicial qualifications, and in respect of the other members from among attorneys-at-law, after the National Assembly has meaningfully consulted such bodies as appear to it to represent such attorneys-at-law and signified its choice of members to the President.

Clause 20 seeks to authorise the Judicial Service Commission to appoint the persons mentioned in this clause.

Clause 21 seeks to remove the power of the President to appoint the Director of Public Prosecutions and seeks to give this power to the Judicial Service Commission. Article 22 seeks to replace the words "Prime Minister" in articles 218, 219 and 220 with the words the "Minister Responsible for Finance". Clause 23 seeks to provide for the financial autonomy of the entities mentioned in the Third Schedule.

Clause 24 seeks to make provision with respect to the functions of the Auditor General and seeks to authorise the Public Accounts Committee to exercise general supervision over the Office of the Auditor General.

A major trust of this Bill is to provide for the independence of the judiciary by removing from executive control the appointment of judges and the appointment of members of the Judicial Service Commission - the body given the duty to advise on the appointment of judges. Another significant feature of this Bill is the removal of the office of the Auditor General from any form of executive control, thereby ensuring the independence of the said office.



Minister of  
Parliamentary Affairs.