

BILL No. 15 of 1995

Monday 31st July, 1995

PARLIAMENT OFFICE,
Public Buildings,
Georgetown,
Guyana.

31st July, 1995

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. 15 of 1995

CONSTITUTION (AMENDMENT) BILL 1995

ARRANGEMENT OF SECTIONS

SECTION

1. Short title.
2. Alteration of the Constitution.

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A BILL

Intituled

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

A.D. 1995

Enacted by the Parliament of Guyana:-

Short title.

1. This Act may be cited as the Constitution (Amendment) Act 1995.

Alteration of the Constitution.

2. During the period commencing on the date on which this Act comes into operation and ending on the date of the enactment of a new Constitution for Guyana or on the expiry of three months from the date of the next General Election, whichever is earlier, the Constitution shall have effect as if -

(a) for article 161 the following articles were substituted -

*Elections Commission.

161.(1) There shall be an Elections Commission for Guyana consisting of a Chairman and such other members as may be appointed in accordance with the provisions of this article.

(2) Subject to the provisions of paragraph (4), the Chairman of the Elections Commission shall be a person who holds or who has held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from any such court or who is qualified to be appointed as any such judge, or any other fit and proper person, to be appointed by the President from a list of six persons, not unacceptable to the President, submitted by the Minority Leader after consultation with the political parties represented in the National Assembly, other than the party to which the President belongs:

Provided that if the Minority Leader fails to submit a list as

provided for, the President shall appoint a person who holds or has held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from any such court or who is qualified to be appointed as any such judge.

(3) In addition to the Chairman, there shall be six members of the Commission who shall be appointed in the following manner -

- (a) three members to be appointed by the President, acting in his own deliberate judgment; and
- (b) three members to be appointed by the President acting in accordance with the advice of the Minority Leader tendered after the consultation with political parties represented in the National Assembly, other than the party to which the President belongs.

(4) A person shall be disqualified for appointment as the Chairman or other member of the Commission if he is an alien.

(5) The Chairman or any other member of the Elections Commission shall vacate his office if any circumstances arise that, if he were not a member of the Commission, would cause him to be disqualified for appointment as such.

(6) The provisions of article 225

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(which relate to removal from office) shall apply to the office of the Chairman or other members of the Elections Commission and for the purposes of paragraphs (4) and (6) of that article, the prescribed authority shall be the Prime Minister:

Provided that in the case of the members referred to in paragraph (3)(b), the Prime Minister shall consult the Minority Leader before tendering any advice to the President under article 225(4).

(7) If, by reason of his illness, absence from Guyana, or suspension under article 225, the Chairman or any other member of the Elections Commission is unable to perform his functions as such, a temporary Chairman or other member, as the case may be, may be appointed in his place.

(8) The provisions of this article shall apply in relation to the appointment of a temporary Chairman or other member of the Elections Commission, and to a temporary Chairman or other member appointed in accordance with this article, as they apply in relation to the Chairman or other member, as the case may be, of the Elections Commission in whose place he is appointed:

Provided that his appointment shall have effect only for the period ending when the person in whose place he has been appointed resumes his functions as, or ceases to be, the Chairman or other member, as the case may be, of the Commission."

(b) immediately after article 161 there were inserted the following article -

161A.(1) Notwithstanding the provisions of the Constitution the power to make appointments to the officer men-

tioned in paragraph (2) and to remove and to exercise disciplinary control over persons, holding or acting in such offices shall vest in the Elections Commission -

(2) The offices referred to in paragraph (1) are -

Cap. 1:03

(a) those offices to which persons are appointed under the Representation of the People Act, namely -

- (i) Chief Election Officer;
- (ii) returning Officer;
- (iii) deputy returning officer;
- (iv) election clerk;
- (v) presiding officer;
- (vi) assistant presiding officer;
- (vii) poll clerk and other offices as may be necessary or desirable under the said Act;

Cap. 18:08

(b) those offices to which persons are appointed under the National Registration Act, namely -

- (i) Commissioner of Registration;
- (ii) Deputy Commissioner of Registration;
- (iii) district supervisor;
- (iv) registrar;
- (v) deputy registrar;
- (vi) divisional registrar and other offices as may be necessary or desir-

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able under the
said Act;

- (c) any office, however styled, similar in nature and status to an office referred to in the preceding sub-paragraphs, appointment to which is made under any written law relating to local government."

(3) The Elections Commission may, by directions in writing and subject to such conditions as it thinks fit, delegate any of its powers under paragraph (1) to any one or more members of the Commission; or by such directions and subject to such conditions as it thinks fit, delegate to a person who holds an office mentioned in paragraph (2) (a) (i) to (v) or (2) (b) (i) to (iv), the power to appoint a person to an office mentioned in paragraph (2) which is subordinate to an office of the person to whom the power of appointment is delegated.

(4) Before the Elections Commission or any member thereof or other person exercising powers under this article appoints to or to act in any office referred to in paragraph (2) any person who holds or is acting in any office, power to make appointments to which is vested under this Constitution in the Judicial, the Teaching, the Police or the Public Service Commission, the Elections Commission or that member or other person shall first seek and obtain the approval of the Commission in which that power is vested.

(5) Where a public officer is appointed to an office referred to in paragraph (2) he shall, subject to paragraph (1), remain a public officer.

(6) Nothing in this article shall

be construed as precluding the Elections Commission from appointing any person who is not a public officer to an office referred to in paragraph (2).

- (c) for article 226 (5) thereof the following were substituted -

"(5) For the purposes of the preceding paragraph a quorum shall consist, in the case of the Elections Commission, of the Chairman and not less than two-thirds of the number of the other members (not being temporary members) for the time being appointed to the Commission;

Provided that if at any stage of a duly summoned meeting a quorum is not present, due to the absence of members therefrom without just cause, such absence of just cause being determined by the Chairman, the meeting shall stand adjourned to the following day at the same time and place and notice of such adjournment shall be given to the absent members; and if at the adjourned meeting a quorum is not present, the members then present, being not less than four including the Chairman, shall be deemed to constitute a quorum and any decision made at that or any such meeting shall be valid in law and binding."

EXPLANATORY MEMORANDUM

This Bill repeals and re-enacts article 161 of the Constitution. The re-enacted article 161 provides for the membership of the Elections Commission to be seven. There shall be a chairman appointed by the President from a list of six persons, not unacceptable to the President submitted to the President by the Minority Leader after consultation with the other Minority parties in the National Assembly. Three other members shall be appointed by the President in his own deliberate Judgment and three by the President, acting on the advice of the Minority Leader tendered after he has consulted the other minority parties in the National Assembly.

The Bill also inserts a new article 161A in the Constitution to empower the Elections Commission to appoint the Chief Election Officer, the Commissioner of National Registration and all other officers and staff as may be necessary.

Further the Bill amends article 226(5) of the Constitution to provide that the quorum of the Elections Commission shall consist of the Chairman and not less than two-thirds of the other members, but in certain circumstances if members absent themselves without just cause the Commission can conduct its business with four members including the Chairman.

The provisions of the Bill are of a temporary nature.

Bernard D'Santos,
Attorney-General
and Minister of Legal Affairs.