

ANTIGUA AND BARBUDA



CONSTITUTION OF ANTIGUA AND BARBUDA (AMENDMENT) BILL, 2018

NO. OF 2018

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ARRANGEMENT OF CLAUSES

PART I

PRELIMINARY

1. Short title, commencement and alteration of the Constitution
2. Interpretation

PART II

**SUBSTITUTING THE CARIBBEAN COURT OF JUSTICE FOR HER MAJESTY
IN COUNCIL**

3. Alteration of section 18 of the Constitution
4. Alteration of section 21 of the Constitution
5. Alteration of section 47 of the Constitution
6. Alteration of section 120 of the Constitution
7. Insertion of Chapter heading
8. Repeal and replacement of section 122 of the Constitution
9. Insertion of sections 112A and 112B in the Constitution
10. Alteration of section 127 of the Constitution

PART III

**REPEAL OF ANTIGUA AND BARBUDA APPEALS TO PRIVY COUNCIL
ORDER**

11. Repeal of Antigua and Barbuda appeals to Privy Council Order

PART IV

GENERAL, SAVINGS, TRANSITIONAL

12. Other relevant references
13. Matters already finally determined
14. Savings
15. Transitional

PART V

OTHER ALTERATIONS

16. Alteration of Part II of Schedule 1 to the Constitution
17. Alteration of Schedule II to the Supreme Court Order

ANTIGUA AND BARBUDA

CONSTITUTION OF ANTIGUA AND BARBUDA (AMENDMENT) BILL, 2018

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A BILL to alter the Constitution of Antigua and Barbuda to provide for the establishing of the Caribbean Court of Justice as the final appellate court for Antigua and Barbuda in substitution for Her Majesty in Council.

WHEREAS it is a fundamental objective that jurisdiction as to the final determination of litigation arising in and for Antigua and Barbuda be vested in the Caribbean Court of Justice in substitution for Her Majesty in Council;

AND WHEREAS the attainment of the said objective requires that there be duly altered the Constitution of Antigua and Barbuda and other constitutional instruments of Antigua and Barbuda;

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Representative of Antigua and Barbuda, and by the authority of the same as follows-

PART I

PRELIMINARY

1. Short title, commencement and alteration of the Constitution

(1) This Act may be cited as the Constitution of Antigua and Barbuda (Amendment) Act, 2018

(2) This Act shall come into effect on such date as may be appointed by Proclamation by the Governor General and published in the Official Gazette; and different dates may be appointed for the various provisions of this Act:

Provided that no provision of this Act shall have effect retroactively to a date prior to the commencement of this Act.

(3) This Act shall be read and construed as altering the Constitution.

2. Interpretation

In this Act-

“Antigua and Barbuda Appeals to Privy Council Order” means the Antigua and Barbuda Appeals to Privy Council Order 1967;

“Antigua and Barbuda Constitution Order” means the Antigua and Barbuda Constitution Order 1981;

“Appeals to Privy Council Order” means the Antigua and Barbuda Appeals to Privy Council Order 1967

“Agreement Establishing the Caribbean Court of Justice” means the Agreement Establishing the Caribbean Court of Justice referred to section 10 of this Act;

“Caribbean Court of Justice” means the Caribbean Court of Justice established under the Agreement Establishing the Caribbean Court of Justice in relation to the Appellate Jurisdiction of that Court established by clause (b) of paragraph 1 of Article III of that Agreement;

“Constitution” means the Constitution of Antigua and Barbuda;

“Constitution of Antigua and Barbuda” means the Constitution of Antigua and Barbuda which is set out in Schedule 1 to the Antigua and Barbuda Constitution Order 1981;

“Constitution Order” means the Antigua and Barbuda Constitution Order 1981;

“Constitutional instruments” includes the-

- (a) Antigua and Barbuda Constitution Order;
- (b) Constitution of Antigua and Barbuda;
- (c) Supreme Court Order; and
- (d) Appeals to Privy Council Order;

“Supreme Court Order” means the Eastern Caribbean Supreme Court Order.

PART II

SUBSTITUTING THE CARIBBEAN COURT OF JUSTICE FOR HER MAJESTY IN COUNCIL

3. Alteration of section 18 of the Constitution

Section 18 of the Constitution is amended in subsection (4), by deleting the words “Her Majesty in Council” wherever they occur and in each case substituting the words “the

Caribbean Court of Justice”, so that subsection (4) as amended, becomes part of the Bill as follows:

“18. Where any question is referred to the High Court in pursuance of subsection (3) of this section, the High Court shall give it decision upon the question and the Court in which the question arose shall dispose of the case in accordance with that decision or, if the decision is the subject of an appeal to the Court of Appeal or to the Caribbean Court of Justice, in accordance with the decision of the Court of Appeal or, as the case may be, of the Caribbean Court of Justice.”

4. Alteration of section 21 of the Constitution

Section 21 of the Constitution is amended in subsection (1), by deleting the words “Her Majesty in Council” from the definition of the word “court” and substituting the words “the Caribbean Court of Justice”, so that subsection (1), as amended, becomes part of the Bill as follows:

“Court means any court of law having jurisdiction in Antigua and Barbuda other than a court established by a disciplinary law, and includes the Caribbean Court of Justice and, in section 4 of the Constitution, a court established by a disciplinary law.”

5. Alteration of section 47 of the Constitution

Section 47 of the Constitution is amended-

(a) in subsection (1), by inserting the words “or the Agreement Establishing the Caribbean Court of Justice” after the word “Order” in line 2 thereof, so that subsection (1), as amended, becomes part of the bill as follows:

“(1) Parliament may alter any of the provisions of this Constitution or the Supreme Court Order or the Agreement Establishing the Caribbean Court of Justice in the manner specified in the following provisions of this section.”

(b) in subsection (2), by inserting the words “or the Agreement Establishing the Caribbean Court of Justice” shall after the word “Order” in line 1 thereof, so that subsection (2), as amended, becomes part of the bill as follows:

“(2) A Bill to alter this Constitution or the Supreme Court Order or the Agreement Establishing the Caribbean Court of Justice shall not be regarded as being passed by the House unless on its final reading in the House the Bill is supported by the votes of not less than two-thirds of the members of the House.”

- (c) in subsection (4), by inserting the words “or the Agreement Establishing the Caribbean Court of Justice” after the word “Order” in line 3 thereof, so that subsection (4), as amended, becomes part of the bill as follows:

“(4) For the purposes of section 55(4) of the Constitution, an amendment of a bill to alter the Constitution or the Supreme Court Order or the Agreement Establishing the Caribbean Court of Justice shall not be suggested to the Senate by the House unless a resolution so to suggest the amendment had been supported by the votes of not less than two-thirds of all the members of the House.”

- (d) in subsection (8)(a), by inserting the words “or the Agreement Establishing the Caribbean Court of Justice after the word “Order” in line 2 thereof, so that subsection (8)(a), as amended, becomes part of Bill as follows:

“8(a) A Bill to alter the Constitution or the Supreme Court Order or the Agreement Establishing the Caribbean Court of Justice Shall not be submitted to the Governor General for his assent unless it is accompanied by a certificate under the hand of the Speaker (or, if the Speaker is for any reason unable to exercise the functions of his office, the Deputy Speaker) that the provisions of section (2), (3) or (4), as the case may be, of this section have been complied with and, where a referendum has been held, by a certificate of the Supervisor of Elections stating the results of the referendum”.

6. Alteration of section 120 of the Constitution

Section 120 of the Constitution is amended in subsection (2) by deleting the words “Her Majesty in Council” wherever they occur and in each case substituting the words “the Caribbean Court of Justice” so that subsection (2), as amended, becomes part of the bill as follows:

“120 (2) When any questions is referred to the High Court in pursuance of this section the High Court shall give its decision upon the question and the court in accordance with that decision or, if the decision is the subject of an appeal to the Court of Appeal or the Caribbean Court of Justice, in accordance with the decision of the Court of Appeal or, as the case may be, the Caribbean Court of Justice.”

7. Insertion of Chapter heading

The Constitution is altered by inserting immediately after section 121 the following-

**“CHAPTER IXA
CARIBBEAN COURT OF JUSTICE
PART I
Jurisdiction of the Caribbean Court of Justice”**

8. Repeal and replacement of section 122 of the Constitution

Section 122 of the Constitution is repealed and the following substituted thereof-

“122. Appeals to the Caribbean Court of Justice

(1) An appeal shall lie, as of right, from decisions of the court of Appeal to the Caribbean Court of Justice, (which is referred to in this chapter as “the Court”) in the following cases:

- (a) final decisions in any civil proceedings where-
 - (i) the matter in dispute on appeal to the Court is of the prescribed value or upwards; or
 - (ii) the appeal involves directly or indirectly a claim to or a question respecting property or a right of the prescribed value or upwards;
- (b) final decisions in proceedings for dissolution or nullity of marriage;
- (c) final decisions in any civil or criminal proceedings which involve a question as to the interpretation of this Constitution;
- (d) final decisions given in the exercise of the jurisdiction conferred upon the High Court relating to redress for a contravention of the provisions of this Constitution for the protection of fundamental rights and freedoms of the individual;
- (e) final decisions given in the exercise of the jurisdiction conferred upon the High Court relating to the determination of any question for which a right of access to the High Court is expressly provided by this Constitution; and
- (f) such other cases as may be prescribed by Parliament.

(2) An appeal shall lie to the Caribbean Court of Justice from decisions of the Court of Appeal with the leave of the Court of Appeal-

- (a) in respect of decisions in any civil proceedings where, in the opinion of the Court of Appeal, the question involved in the appeal is one that, by reason of its general or public importance or otherwise, ought to be submitted to the Court; and

(b) such other cases as may be prescribed by Parliament.

(3) An appeal shall lie to the Caribbean Court of Justice with the special leave of the Court from any decision of the Court of Appeal in any civil or criminal matter.

(4) Reference in this section to decisions of the Court of Appeal shall be construed as references to decisions of that court in exercise of the jurisdiction conferred upon that court by this Constitution or any other law for the time being in force in Antigua and Barbuda.

(5) In this section the “prescribed value” means the value of fifteen hundred dollars or such other value as may be prescribed by Parliament.

(6) This section shall be subject to the provisions of subsection (8) of section 44 of this Constitution.”

9. Insertion of sections 122A and 122B in the Constitution

The Constitution is amended by inserting after section 122 the following-

122A. “Decisions of the Caribbean Court of Justice shall be final

Decisions of the Caribbean Court of Justice shall be final and shall not be subject to any appeal, review or other enquiry whatever in any other court, tribunal or body whatsoever.”.

PART II

Appeals from courts in Antigua and Barbuda only to the Caribbean Court of Justice

122B. No appeal shall lie from any other court in or for Antigua and Barbuda to the Caribbean Court of Justice except appeals from the Court of Appeal.

No appeal shall lie or shall be brought from or in respect of any decision of any court in or for Antigua and Barbuda to any court, tribunal or other body whatsoever, except only to the Caribbean Court of Justice in accordance with section 122 of this Constitution, whether-

- (a) as of right;
- (b) by leave of any court, tribunal or other body;
- (c) by special leave of any court, tribunal or other body; or
- (d) otherwise.”.

10 Alteration of section 127 of the Constitution

Section 127 of the Constitution is amended as follows-

- (a) in subsection (1), by inserting the following definition in its appropriate alphabetical order-
“Agreement Establishing the Caribbean Court of Justice” means the Agreement Establishing the Caribbean Court of Justice, signed at St. Michael, Barbados, on the 14th day of February 2001, together with all Protocols and amendments thereto;”;
- (b) by deleting paragraph (b) subsection (3) and substituting the following-
 - (b)(i) references to the Court of Appeal, the High Court and the Judicial and Legal Services Commission are references to the Court of Appeal, the High Court and the Judicial and Legal Services Commission established by the Supreme Court Order; and
 - (ii) references to the Caribbean Court of Justice are references to the Caribbean Court of Justice established under the Agreement Establishing the Caribbean Court of Justice in relation to the Appellate Jurisdiction of that Court established by clause (b) of paragraph 1 of Article III of that Agreement.”.

PART III

REPEAL OF ANTIGUA AND BARBUDA APPEALS TO PRIVY COUNCIL ORDER 1967

11. Repeal of Antigua and Barbuda appeals to Privy Council Order

The Antigua and Barbuda Appeals to Privy Council Order 1967, in so far as it has effect as part of the law of Antigua and Barbuda, is repealed.

PART IV

GENERAL, SAVINGS, TRANSITIONAL

12. Other relevant references

Where in any part of the constitutional instruments other than those specifically mentioned above, or in any written law other than the constitutional instruments, provision is made for, or reference is made to, an appeal to Her Majesty in Council or Judicial Committee of Her Majesty’s Privy Council or the Judicial Committee of the Privy Council or the Judicial Committee or the Privy Council or any such kindred

expression, such provision or reference shall, after the date of commencement of this Act, be construed as reference to an appeal to the Caribbean Court of Justice.

13. Matters already finally determined

Nothing contained in this Act shall be construed as conferring jurisdiction on the Caribbean Court of Justice to hear and determine matters in relation to any decision of the Court of Appeal which at the date of commencement of this Act was, pursuant to the Constitution or any other law, declared to be final.

14. Savings

The provisions of this Act-

- (a) shall not affect-
 - (i) any application that was made to Her Majesty in Council; or
 - (ii) any matter that was before Her Majesty in Council before the date of commencement of this Act;
- (b) shall not affect the execution or enforcement of any decision given, in respect of an application or matter referred to in paragraph (a) of this section, after the commencement of this Act.

15. Transitional

(1) An appeal pending before Her Majesty in Council at the date of commencement of this Act may be transferred to the Caribbean Court of Justice with the consent of all parties.

(2) Proceedings shall be deemed to be pending where-

- (a) an appeal to Her Majesty in Council has been instituted before the date of commencement of this Act; or
- (b) leave to appeal or special leave to appeal to Her Majesty in Council has been granted or applied for before the date of commencement of this Act.

(3) Any judgment of Her Majesty in Council which at the commencement of this Act has been given but not satisfied may be enforced after the date of commencement of this Act as if such judgment had been a judgment of the Caribbean Court of Justice.

**PART V
OTHER ALTERATIONS**

16. Alteration of Part II of Schedule 1 to the Constitution

(1) Part II of Schedule I to the Constitution is repealed and replaced by the following-

“(ix) sections 4,5 (except subsection (1)), 6, 8(3), 11, 18 or 19”

(2) Without prejudice to subsection (1)-

- (a) a measure to raise the age of retirement of a Judge of the Court of Appeal or of the High Court Shall not need to be approved on referendum.
- (b) a measure to alter any provisions of the Supreme Court Order to substitute for the expression “Puisne Judge” the expression “High Court Judge” shall not need to be approved on a referendum/

17. Alteration of Schedule II to the Supreme Court Order

Paragraph 8 of Schedule 2 to the Constitution Order is repealed.

Passed the House of Representatives this day of , 2018

Speaker of the House of Representatives

Clerk to the House of Representatives

EXPLANATORY MEMORANDUM

This Bill proposes to replace Her Majesty in Council as the final Court of Appeal for Antigua and Barbuda. The current constitutional position of the final Court of Appeal for Antigua and Barbuda is that section 122 of the Constitution vests in Her Majesty in Council the power to exercise the final appellate jurisdiction for Antigua and Barbuda.

2. It is therefore proposed to replace Her Majesty in Council with the Caribbean Court of Justice established by the Agreement Establishing the Caribbean Court of Justice, signed at St. Michael, Barbados on 14th February 2001. Antigua and Barbuda, as one of the contracting Parties to that Agreement became a signatory to the Agreement on 14th February, 2001.

3. When a country ratifies the CCJ Agreement, that country automatically submits to the CCJ Original Jurisdiction, which has exclusive jurisdiction to interpret and apply the Revised Treaty of Chaguaramas. No constitutional change is needed for this, as it does not alter the Constitution.

4. Accession by a country to the CCJ Appellate Jurisdiction (“CCJ AJ”) requires a special agreement between that country and CCJ. Constitutional change is needed for this as it alters the provisions in the Constitution and the other constitutional instruments which establish and regulate the Courts; it substitutes a new final appellate court for that provided for by the Constitution. So, **clause 1 (3)** makes it clear that the Act shall be read and construed as altering the Constitution.

5. Section 122, in Chapter IX, of the Constitution provides for appeals from the Court of Appeal to “Her Majesty in Council”, UKPC, which may be called the “UKPC appeals clause”.

6. The CCJ Agreement has very admirable provisions on the appointment of CCJ Judges, their tenure, their protection against arbitrary removal from office, their being assured substantial jurisdiction, the financing of CCJ. It fully safeguards CCJ against political interference. **UKPC has certified that the CCJ Agreement represents a serious and conscientious endeavour to create a regional court of high quality and “complete independence, enjoying all the advantages which a regional court could hope to enjoy”.**

7. Mainly, the substituting of CCJ AJ for UKPC would take place in section 122, transforming the UKPC appeals clause into what may be called to “CCJ appeals clause”. The Bill would repeal section 122 and replace it, deleting the words “Her Majesty in Council” wherever they appear in section 122, and in each case substituting the words “the Caribbean Court of Justice”. That would be done by **clause 8**.

8. The substituting of CCJ for UKPC would be done also by **clauses 3, 4 and 6** regarding provisions of the Constitution other than section 122.

9. To emphasise that CCJ AJ would be the final appellate court, **clause 9** would insert the Constitution a new provision, section 122A, which would say that CCJ decisions “shall be final and not subject to any appeal”. Clause 17 also refers.

10. It should be stated that no appeal shall lie from any court in Antigua and Barbuda to any court except on to CCJ. **Clause 9** would insert in the Constitution a new provision, section 122B, saying so.

11. It will be necessary to provide that alternations of the CCJ Agreement shall require the votes of not less than two-thirds of all the members of the House of Representatives. This would be done by **Clauses 5(a)(i), (b)(i), (c)(i), (d), 11, 16**.

12. There is a sweeping-up clause to substitute CCJ AJ for UKPC in provisions not specified by the Bill. This is **Clause 12**.

13. What decisions of the Court of Appeal would have been final, not subject to appeal, when the Bill would have passed, would remain final by **clause 13**.

14. Matters that were already at, or on the way to, UKPCV when the Bill would have been passed shall continue to be as they are, by **clauses 14 and 15**. However, such a matter may be transferred to CCJ with the consent of all parties, by **clause 15(1)**.

15. It is appropriate to facilitate raising the age of retirement of Judges of the Eastern Caribbean Supreme Court. So too with providing machinery for their removal from office not involving the UK Lord Chancellor and the Privy Council but instead involving CCJ. It is also proposed to replace the expression “Puisne Judge” with the expression “High Court Judge”. These matters will require agreement on the part of EC states, they cannot be done unilaterally by Antigua and Barbuda. The proposal is to provide for the

necessary changes to be made without the need for approval on the referendum. These are subjects of Clause 16 of the Bill.

16. The date of commencement of the Act would be appointed by the Governor-General by proclamation published in the Gazette, by clause 1(3); but not to have effect retroactively.

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**Hon. Steadroy Benjamin
Attorney General and
Minister of Justice and
Legal Affairs**