

ANTIGUA AND BARBUDA



CONSTITUTIONAL REFERENDUM BILL, 2016

NO. OF 2016

ANTIGUA AND BARBUDA
CONSTITUTIONAL REFERENDUM BILL, 2016
NO. OF 2016

ARRANGEMENT OF CLAUSES

PART I: PRELIMINARY

1. Short title and commencement
2. Interpretation

PARTII: CONSTITUTIONAL REFERENDUM

3. Holding of constitutional referendum on constitutional amendment bill
4. Writ of constitutional referendum
5. Action on writ
6. Period of referendum
7. Adjourning constitutional referendum day
8. Persons entitled to vote on a constitutional referendum
9. Constitutional referendum question
10. Two or more constitutional referendums simultaneously
11. Forms of ballot paper
12. Symbols on ballot paper in constitutional referendum
13. Colour-coding on constitutional amendment bills
14. Official mark on ballot paper
15. Appointment of referendum monitors

PART III: COUNTING OF VOTES, REPORTING AND RETURN TO WRIT

16. Counting of votes in constitutional referendum
17. Statement of the poll returning officers
18. Return of writ by Supervisor of Elections
19. Report of Supervisors of Elections

PART IV: DISPUTING VALIDTY OF REFERENDUM

20. Disputing Validity of referendum
21. Constitutional referendum petitions regulations

PART V: OFFENCES

- 22. Holding a public meeting
- 23. Influencing electors during polling
- 24. Offences by Referendum Officers
- 25. Offences from the representation of the People Act

PART VI: MISCELLANEOUS

- 26. Application and modification of the Representation of the People Act
- 27. Expenses
- 28. Computation of time
- 29. Using electronic media for publishing
- 30. Savings
- 31. Disapplication of the Referendum Act

PART VII: REGULATIONS

- 32. Governor-General may make Regulations

SCHEDULE: FORMS

ANTIGUA AND BARBUDA
CONSTITUTIONAL REFERENDUM BILL, 2016
NO. OF 2016

AN ACT to make provision for bills which need to be approved by voters on a referendum and to prescribe procedures for the purposes of holding a referendum on such bills being bills for the altering of relevant provisions of the Constitution of Antigua and Barbuda and certain other constitutional instruments.

WHEREAS the Constitution of Antigua and Barbuda in section 47(5)(c)(6)(7) requires that a bill for an Act to alter the provisions of the Constitution and of the other constitutional instruments stipulated therein be approved on a referendum held in accordance with such provision as may be made in that behalf by Parliament and with such procedures as may be prescribed by Parliament for the purposes of the referendum, such approval to be by not less than two-thirds of all the votes validly cast on the referendum:

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 Antigua and Barbuda, and by the authority of the same as follows—

PART I
PRELIMINARY

1. Short title and commencement

(1) This Act may be cited as the CONSTITUTIONAL REFERENDUM ACT 2016.

(2) This Act shall come into effect on such date as may be appointed by Proclamation issued by the Governor-General and published in the Official Gazette.

2. Interpretation

In this Act, unless otherwise provided –

“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;

“ballot paper” means a constitutional referendum ballot paper;

“community organisation” includes civil society organisations, commercial bodies, farmers’ organisations, media bodies, political parties, religious organisations and trade unions;

“constituency” means a constituency within the meaning of that term as used in the Constitution and the Representation of the People Act;

“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 amendment bill” means a bill referred to in section 3(1) as a bill for an Act to alter any of the relevant constitutional provisions;

“constitutional instruments” include the –

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

“constitutional referendum” means a referendum on the question whether entitled voters approve or do not approve a constitutional amendment bill, a referendum of the kind referred to in section 3(1);

“constitutional referendum ballot paper” means what is ascribed to that expression by section 9(1);

“constitutional referendum day” means the date appointed for the holding of a constitutional referendum under section 4 (2) (d);

“constitutional referendum question” means a question asking entitled voters in a constitutional referendum whether they approve a constitutional amendment bill, referred to in section 9(1);

“constitutional referendum writ” means a writ of constitutional referendum means a writ issued pursuant to section 4;

“elector” means an entitled voter;

“entitled voter” means a person who is entitled to vote on a constitutional referendum, referred to in section 8;

“political party” means an entity whose constitution or body of rules presents itself, expressly or impliedly, as having as one of its purposes the proposing of persons to be elected as, or to continue or not to continue to be, members of the House of Representatives:

Provided that such an entity must have a publicly known principal office or headquarters;

“referendum” means constitutional referendum;

“referendum ballot paper” means a constitutional referendum ballot paper;

“referendum day” means what is ascribed to that expression by section 4(2)(b);

“referendum monitor” means a person appointed to observe the conduct of a constitutional referendum pursuant to section 15;

“referendum officer” means a person who in relation to a constitutional referendum performs functions which an Election Officer perform under the Representation of the People Act;

“referendum question” means a constitutional referendum question;

“regulations” means regulations made by the Governor-General under section 31;

“rejected ballot paper” means a ballot paper which, on a constitutional referendum day, has been rejected by the presiding officer because the ballot paper —

- (a) has not been supplied to an elector by the presiding officer;
- (b) has not been marked by an elector as approving or not approving a constitutional amendment bill;
- (c) has been marked by an elector as both approving and not approving a constitutional amendment bill; or

- (d) has on it any writing or mark by which an elector can be identified; but no ballot paper shall be rejected on account of any writing, number or mark placed thereon by a presiding officer by virtue of a specific provision of this Act or the Regulations;”

“relevant constitutional provisions” means what is ascribed to that expression by section 3(3);

“Representation of the People Act” means the Representation of the People Act, as amended, and any subsidiary legislation made under that Act;

“spoiled ballot paper” means a ballot paper which, on a constitutional referendum day, has not been allowed by the presiding officer to be deposited in the ballot box because—

- (a) it has been found by the presiding officer to be soiled or improperly printed; or
- (b) after it has been handed by the presiding officer to an elector to cast his or her vote, it—
 - (i) has been inadvertently so dealt with by the elector that it cannot conveniently be used,
 - (ii) has been spoiled in marking by the elector, and has been handed back to the presiding officer and exchanged for another ballot paper;”

“State” means Antigua and Barbuda;

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

“voter” means an entitled voter.

“writ” means a writ of constitutional referendum;

“writ of constitutional referendum” means a writ issued pursuant to section 4.

PART II
CONSTITUTIONAL REFERENDUM

3. Holding of constitutional referendum on constitutional amendment bill

(1) For the purpose of enabling entitled voters to vote on the question whether they approve or do not approve a bill for an Act to alter any of the relevant constitutional provisions, which may be referred to as a ‘constitutional amendment bill’, a vote shall be taken by way of a referendum. Such a referendum shall be held in accordance with the provisions of this Act, made pursuant to section 47(5)(c)(6)(7) of the Constitution; and may be referred to as a “constitutional referendum”.

(2) Two or more referendums may be held on the same referendum day pursuant to section 10.

(3) The expression “relevant constitutional provisions” means any of the provisions of the constitutional instruments whose alteration requires approval on a referendum, referred to in section 47(5)(c) of the Constitution;

4. Writ of constitutional referendum

(1) Whenever a bill is for an Act to alter any of the relevant constitutional provisions, and so required by section 47(5)(c) of the Constitution to be approved on a referendum, the Governor-General may, for the purpose of holding such a constitutional referendum, issue a writ of constitutional referendum under the Public Seal of the State, which may hereinafter be referred to as a ‘writ’.

(2) A writ issued pursuant to subsection (1) shall—

- (a) be in the form set out in the First Schedule;
- (b) be signed by the Governor-General;
- (c) appoint the day and date for the close of registration of persons to be registered pursuant to the Representation of the People Act;
- (d) the day or days and date or dates for taking the votes of voters at the constitutional referendum, the holding of the referendum or referendums, which may be referred to as a ‘referendum day’ or ‘referendum days’ as the case may be;
- (e) appoint the day and date on which the writ shall be returned; and

- (f) have attached to it a copy of the constitutional amendment Bill to which the writ relates.

(3) The date fixed under subsection (2) (c) for the close of registration of persons entitled to be registered pursuant to the Representation of the People Act to vote in the constitutional referendum shall be the ninth day after the issue of a writ.

(4) The date fixed under subsection (2) (d) as the referendum day shall be no less than twenty-five (25) days, and no more than ninety days, after the issue of the writ, and may constitute one referendum day or two or more consecutive referendum days.

(5) The date fixed under subsection (2) (e) for the return of the writ shall be no more than sixty days after the issue of the writ.

5. Action on writ

(1) The Governor-General shall, immediately after issuing a writ, forward the original of the writ with a copy of the relevant constitutional amendment Bill attached thereto to the Supervisor of Elections.

(2) The Supervisor of Elections shall, immediately after receiving from the Governor-General a writ and an attached copy of the relevant constitutional amendment bill—

- (a) forward a copy of the writ and of the relevant constitutional amendment bill to the returning officer for each constituency; and
- (b) cause a copy of the writ and of the relevant constitutional amendment bill to be published in two (2) issues of the Official Gazette, in one (1) issue of two (2) newspapers circulating regularly in the State, and on such electronic media including internet facilities as the Supervisor of Elections thinks fit not less than fifteen (15) days before the holding of the referendum to which the relevant constitutional amendment bill relates.

(3) Each returning officer shall, immediately after receiving a copy of a writ and of the relevant constitutional amendment bill from the Supervisor of Elections:

- (a) cause copies of the writ and of the relevant constitutional amendment bill to be made available for examination by the general public at such public buildings or offices as Court Houses, Police Stations, Medical Stations, Revenue Offices, Post Offices, Parliamentary Elections Constituency Offices and other places in the constituency as he or she may deem fit;

- (b) cause copies of a notice informing the general public of the places at which copies of the writ and the relevant constitutional amendment bill are available for examination in the constituency, referred to in paragraph (a), to be posted in some conspicuous place near the principal door of the buildings mentioned in paragraph (a) and more widely across the constituency, not less than seventeen (17) days before the holding of the referendum to which the bill relates; and
- (c) forward a copy of the writ and the relevant constitutional amendment bill to each presiding officer in the constituency.

(4) Each presiding officer shall, subject to the directions of the Supervisor of Elections, immediately after receiving a copy of the writ and the relevant bill from his or her returning officer, take all action that is necessary to carry the writ into effect. As directed by the returning officer in accordance with this Act and regulations made thereunder.

(5)(a) An Explanatory Paper on every constitutional amendment bill, written in clear and simple terms, purely factually, not argumentatively, for the general public to be able to understand easily, shall be prepared by the Attorney-General, be printed, and be made available for examination by the general public at appropriate places across the State throughout a period of not less than fifteen (15) days before the holding of the referendum to which the bill relates.

- (b) The Attorney-General shall cause to be published in two (2) issues of the Official Gazette, in one (1) issue of two (2) newspapers having widespread circulation regularly in the State, and on such electronic media including internet facilities as the Attorney-General thinks fit, a notice informing the general public of the places where copies of the Explanatory Paper are so available. The Attorney-General shall also cause copies of the said notice to be posted at appropriate places across the State. The Attorney-General shall cause these measures to be taken not less than fifteen (15) days before the holding of the referendum to which the referendum relates.
- (c) The expression “appropriate places” for the purpose of this subsection shall include the Treasury, the Public Library, Court Houses, Police Stations, Medical Stations, Revenue Offices, Post Offices, Parliamentary Elections Constituency Offices and other places across the State as the Attorney-General may deem fit.

(6) Publishing a bill pursuant to subsection (2)(b), making copies of the bill available for examination by the general public pursuant to subsection (3)(a), and making copies of an Explanatory Paper on the bill available for examination by the general public

pursuant to subsection (5) shall together be deemed to constitute sufficient notice to the public of the provisions of the bill for all purposes in any proceedings.

6. Period of referendum

A writ may appoint a period of a day or successive days for the holding of a constitutional referendum or constitutional referendums, including the counting of the ballots in the referendum or the referendums, fixed in accordance with section 4(6):

Provided that the Supervisor of Elections may in his or her discretion extend that period so appointed by the Governor-General, and the Supervisor of Elections may do so either before or after voting begins in a referendum.

7. Adjourning constitutional referendum day

(1) Where at any time between the issue of a writ under section 4 of this Act and the day appointed by the writ pursuant to section 4 (2) (d) the Governor-General is satisfied that it is expedient to adjourn the holding of the constitutional referendum by reason of—

- (a) Her Majesty's Government having become engaged or being likely to become engaged in any war;
- (b) the proclamation of any state of emergency under the Constitution, or the Emergency Powers Act, section 3 Chapter 147 of the 1992 Revised Laws of Antigua and Barbuda ;
- (c) 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
- (d) the likelihood that the current list for every constituency or for any particular constituency will not be printed before the day appointed pursuant to section 4 (2) (d) that any essential constitutional referendum supplies or materials will not be available in adequate quantities upon such day, he or she may by proclamation adjourn the holding of the constitutional referendum for some other day specified in the proclamation, not being more than thirty days after the day specified in the writ issued under section 4.

(2) 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 on the day so specified in such proclamation.

8. Persons entitled to vote on a constitutional referendum

Every person who, at the time when a constitutional referendum is held, would be entitled to vote in elections of members of the House of Representatives shall be entitled to vote on the referendum; in accordance with section 47(6) of the Constitution; and may be referred to as an “entitled voter”. Such a person may also be referred to as an “elector”.

9. Constitutional referendum question

(1) Approval by persons voting on a constitutional amendment bill on a constitutional referendum shall be by means of voting on a constitutional referendum ballot paper asking voters the question whether they approve the bill. The question must be formulated in such a way that an affirmative answer to the question, approving the bill, would be in the word “YES”, with or without a symbol, which may be called an “affirmative symbol”; and a negative answer to the question, not approving the bill, would be in the word “NO”, with or without a symbol, which may be called a “negative symbol”. Such a question, regarding a constitutional amendment bill, shall be on a constitutional referendum ballot paper in the form prescribed under section 11, and may be referred to as a “constitutional referendum question”.

(2) An answer, whether affirmative or negative, to a constitutional referendum question is a vote.

(3) In respect of any one constitutional amendment bill, only one constitutional referendum question may be asked.

(4) For the avoidance of doubt, it is hereby emphasised that a ballot paper refers to the paper upon which a particular constitutional referendum question is printed and that two or more ballot papers may be printed on one or more sheets of paper.

10. Two or more constitutional referendums simultaneously

(1) The approval of voters for two or more constitutional amendment bills may be sought on the same constitutional referendum day, and each such exercise shall be a referendum, so that two or more such referendums may be held simultaneously, that is, on the same constitutional referendum day.

(2) Where two or more constitutional referendum are held on one date, the Supervisor of Elections may allocate to each constitutional referendum ballot paper —

- (a) one distinct number and include the number in its short title; or
- (b) one distinct colour; or
- (c) any other distinct feature as may be determined by the Supervisor of Elections.

(3) Notwithstanding subsection (2), the Supervisor of Elections shall not allocate to any constitutional amendment Bill any colour or other distinct feature that is associated with any candidate for election, or any entity having as one of its purposes the proposing of candidates for election, to the membership of the House of Representatives under the Representation of the People Act.

11. Forms of ballot paper

(1) A constitutional referendum ballot paper shall be designed to ascertain whether entitled voters answer affirmatively or negatively the constitutional referendum question printed on the ballot paper. This is in order to find out whether entitled voters approve or do not approve the constitutional amendment bill related to such question.

(2) If there is printed on one sheet of paper used in a constitutional referendum only one constitutional referendum question, the constitutional referendum ballot paper shall be in the form set out as Form No. 2 in the Schedule.

(3) Where two (2) or more constitutional referendums are held on the same referendum day, two or more constitutional referendum questions may be printed on one sheet of paper, and that sheet of paper shall be in the form set out as Form No. 3 in the Schedule.

(4) When two (2) or more constitutional referendum questions are printed on one sheet of paper, as provided for in subsection (3):

- (a) it shall not be necessary for the initials of an election officer to appear more than once on the sheet of paper on which the questions are printed;
- (b) the presence of any mark or writing on the sheet of paper by which a voter can be identified invalidates the entire sheet of paper, and all the votes or answers to the questions, on the sheet of paper; and
- (c) a ground which invalidates the sheet of paper other than the ground referred to in paragraph (b) shall apply only to the particular vote or answer to the

question to which such ground relates, and shall not affect the validity of any other vote or answer on the sheet of paper.

(5) If on a constitutional referendum day there is only one constitutional referendum question concerning only one constitutional amendment bill, voting on the ballot paper regarding that question is the voting exercise. If on a constitutional referendum day there are two or more constitutional referendum questions concerning two or more constitutional amendment bills, voting on the ballot paper or ballot papers regarding those two or more questions is the voting exercise.

(6) Symbols on constitutional referendum ballot papers and colour-coding of constitutional amendment Bills may be used if the Supervisor of Elections so directs, in accordance with sections 12 and 13.

12. Symbols on ballot paper in constitutional referendum

(1) An “affirmative symbol” and a “negative symbol” referred to in section 8(1) may be used on a constitutional referendum ballot paper as the Supervisor of Elections deems fit, if he or she decides that they may be used; such symbols shall be allocated by him or her in accordance with this Act and any regulations made under it:

Provided that in allocating symbols for constitutional referendum ballot papers the Supervisor of Elections shall, as much as possible, avoid any symbol which is associated with a political party or an election candidate.

(2) Where there are two or more constitutional referendum questions, regarding two or more constitutional amendment bills on the same constitutional referendum day, this subsection shall govern the use of symbols. One affirmative symbol may be used for an affirmative answer to some or all of the questions regarding some or all of the bills; and one negative symbol may be used for a negative answer to some or all of the questions regarding some or all of the bills.

13. Colour-coding of constitutional amendment bills

(1) On a constitutional referendum day on which two or more constitutional amendment bills are proposed for approval, the Supervisor of Elections may in his or her discretion allocate colours to the bills, a different colour being allocated to each bill, coding by colour the references to the bills, for better supervision of the referendum.

(2) In allocating colours to the bills, the Supervisor of Elections shall, as much as possible, avoid any colour which is associated with a political party or an election candidate.

14. Official Mark on ballot paper

(1) Every ballot paper shall be marked with an official mark, which shall be either embossed or perforated.

(2) The official mark shall be kept secret, and an interval of not less than seven years shall intervene between the use of the same official mark at a succeeding constitutional referendum.

15. Appointment of referendum monitors

(1) A community organisation may appoint, in writing to the Supervisor of Elections, in each constituency referendum monitors, who shall observe the conduct of a constitutional referendum across such constituency.

(2) A community organisation may, in each constituency, appoint one referendum monitor as the chief referendum monitor to oversee the observation of the conduct of a constitutional referendum across such constituency.

PART III**COUNTING OF VOTES, REPORTING AND RETURN TO WRIT****16. Counting of votes in constitutional referendum**

(1) The results of the poll on a constitutional referendum question on a constitutional amendment bill shall be ascertained by—

- (a) counting the votes cast with an affirmative answer “yes” on the constitutional referendum question regarding the bill and thereby in approval of the bill;
- (b) counting the votes cast with a negative answer “no” on the constitutional referendum question regarding the bill and thereby not in approval of the bill; and
- (c) calculating the respective percentages of the figure under paragraph (a) and the figure under paragraph (b) from the total number of valid votes cast, excluding rejected ballot papers and spoilt ballot papers from the count.

(2) If on any one constitutional referendum day approval of the voters is sought for two or more constitutional amendment bills, as provided for by section 10, the percentage of votes cast in approval of each such bill shall be calculated on the number of votes cast nationally on each such bill, account being taken of votes in approval and those not in approval thereof; each such bill being considered separately. In calculating the percentage of votes cast in approval or disapproval of any one such bill, no account shall be taken of votes cast in approval or disapproval of any other bill on that referendum day.

17. Statement of the poll from returning officers

Immediately upon receipt of the results of the poll for a constitutional referendum from each polling station in his or her constituency, each returning officer shall in respect of the referendum—

- (a) prepare a written statement of the poll held in his or her constituency, which shall set out in relation to each polling division, polling station and the constituency as a whole the following:
 - (i) the number of electors who were eligible to vote in the referendum;
 - (ii) the number of ballot papers which were available for distribution to electors;
 - (iii) the number of electors whose names appear in the poll books as having been each delivered a ballot paper;
 - (iv) the number of unused ballot papers regarding the referendum, that is, the number of ballot papers which were not delivered to electors;
 - (v) the number of rejected ballot papers;
 - (vi) the number of spoiled ballot papers;
 - (vii) an ascertainment in writing that all ballot papers regarding the referendum were accounted for;
 - (viii) the total number of valid votes cast answering the constitutional referendum question in the affirmative and thereby approving the relevant constitutional amendment bill;
 - (ix) the total number of valid votes cast answering the constitutional referendum question in the negative and thereby not approving the relevant constitutional amendment bill;
- (b) sign the statement of the poll; and
- (c) send the signed statement of the poll to the Supervisor of Elections.

PART V-**DISPUTED VALIDITY OF REFERENDUM****18. Return of the writ by Supervisor of Elections**

(1) The Supervisor of Elections, upon receipt of the statements of the poll for a constitutional referendum from the returning officers pursuant to section 17, shall—

- (a) prepare a certificate of the results of the referendum which, in relation to the whole state, shall set out—
 - (i) the total number of electors who were eligible to vote in the referendum;
 - (ii) the total number of ballot papers which were available for distribution to electors;
 - (iii) the total number of electors whose names appear in the poll books as having been each delivered a ballot paper;
 - (iv) the total number of unused ballot papers regarding the referendum, that is, the number of ballot papers which were not distributed to electors;
 - (v) the total number of rejected ballot papers;
 - (vi) the total number of spoiled ballot papers;
 - (vii) an ascertainment in writing that all ballot papers for the referendum were accounted for;
 - (viii) the total number of valid votes cast answering the constitutional referendum question in the affirmative and thereby approving the relevant constitutional amendment bill; and the percentage that this number represents in relation to the total number of valid votes cast for the bill;
 - (ix) the total number of valid votes cast answering the constitutional referendum question in the negative and thereby not approving the relevant constitutional amendment bill; and the percentage that this number represents in relation to the total number of valid votes cast for the bill;
- (b) sign the certificate of the result of the referendum;
- (c) attach the signed certificate of the result of the referendum to the writ; and
- (d) return the writ with his or her signed certificate of the result of the referendum endorsed on the writ.

(2) The Supervisor of Elections must cause to be published in the Official Gazette a copy of his or her certificate of the result of the referendum referred to in paragraph (1)(a), and a copy of such a certificate so published is, subject to this Act, conclusive

evidence of the result of the referendum to which it relates. The Supervisor of Elections shall also cause a copy of the certificate to be published in two (2) newspapers having widespread circulation regularly in the State and on such electronic media including internet facilities as the Supervisor of Elections thinks fit.

(3)The Supervisor of Elections shall cause a copy of the report of the results of the poll in each constituency referred to in section 17 to be published in two (2) newspapers having widespread circulation regularly in the State and on such electronic media including internet facilities as the Supervisor of Elections thinks fit.

19. Report of Supervisor of Elections

(1) The Supervisor of Elections shall, immediately after the close of voting in a constitutional referendum, cause to be prepared a report that shall, in respect of the referendum and in relation to each polling division and each polling station in each constituency, in respect of each constituency as a whole and in respect of the state as a whole set out—

- (a) the number of electors who were eligible to vote in the referendum;
- (b) the number of ballot papers which were available for distribution to electors;
- (c) the number of electors whose names appear in the poll books as having been each delivered a ballot paper;
- (d) the number of unused ballot papers regarding the referendum, that is, the number of ballot papers which were available for distribution to electors but were not distributed to electors;
- (e) the number of rejected ballot papers;
- (f) the number of spoiled ballot papers;
- (g) an ascertainment in writing that all ballot papers regarding the referendum were accounted for;
- (h) the total number of valid votes cast answering the referendum question in the affirmative and thereby approving the relevant constitutional amendment bill; and in respect of the State as a whole the percentage that this number represents in relation to the total number of valid votes cast for the bill;
- (i) the total number of valid votes cast answering the referendum question in the negative and thereby not approving the relevant constitutional amendment bill; and in respect of the state as a whole the percentage that this number represents in relation to the total number of valid votes cast for the bill.

(2) The Report of the Supervisor of Elections may include such comments on the conduct of the referendum and other information as he or she deems relevant.

(3) The Report of the Supervisor of Elections shall be a public document.

PART IV

DISPUTED VALIDITY OF REFERENDUM

20. Disputing validity of referendum

(1) The High Court shall, on application made by the Attorney General or any person entitled to vote in the constitutional referendum, determine the validity of any—

- (a) constitutional referendum; or
- (b) statement or certificate concerning the conduct or results of a constitutional referendum.

(2) An appeal shall lie as of right to the Court of Appeal from any final decision of the High Court determining such a question as is referred to in subsection (1).

(3) No appeal shall lie from any decision of the Court of Appeal in exercise of the jurisdiction conferred by subsection (2), and no appeal shall lie from any decision of the High Court in proceedings under subsection (1) other than a final decision determining such a question as is referred to in subsection (1).

21. Constitutional referendum petition regulations

Subject to section 20 of this Act, the validity of any constitutional referendum or of any return to a constitutional referendum writ, or a statement or certificate concerning the conduct or results of a constitutional referendum, may be disputed in accordance with constitutional referendum petition regulations made by the Governor-General made under section 31.

PART V

OFFENCES

22. Holding a public meeting

(1) Every person who, between the date of the notification by the Supervisor of Elections of the issue by the Governor-General of a writ and the day before the constitutional referendum day, intends to hold a meeting in any public place or road, shall

give at least three hours notice in writing of his or her intention to the nearest police station.

(2) Where more than one person gives notice of an intention to hold a meeting at the same place or within three hundred yards of each other at or about the same time, the person who first gave notice shall be entitled to hold the meeting, and the police shall inform that other person accordingly.

23. Influencing electors during polling

(1) During the hours that the poll is open upon a constitutional referendum day, no person shall upon any public road or in any public place or in any place or building with the intent of influencing the public within one hundred yards of any building in which a polling station is situate seek to influence any elector to vote for any answer to the constitutional referendum question or to ascertain for which answer any elector intends to vote or has voted.

(2) Every person who contravenes any of the provisions of subsection (1) commits an offence and is liable on summary conviction to a fine of five hundred dollars or to imprisonment for six months, or to both such fine and imprisonment.

24. Offences by referendum officers

(1) Every referendum election officer in attendance at a polling station, or the counting of the votes, shall maintain and aid in maintaining the secrecy of the voting in such station and shall not communicate, except for some purpose authorised by law, to any person any information as to the name or number on the current list of—

- (a) any elector who has or has not applied for a ballot paper; or
- (b) any voter who has voted at that station, and no person shall interfere with or attempt to interfere with an elector when casting his or her vote or otherwise attempt to obtain in the polling station any information as to the nature of his or her vote.

(2) No person shall, directly or indirectly, induce any voter to display his or her constitutional referendum ballot paper after he or she has marked it so as to make known whether he or she approved or disapproved a constitutional amendment Bill.

(3) Every person who contravenes subsection (1) or (2) commits an offence and is liable on summary conviction to imprisonment for six months or to a fine of five hundred dollars.

(4) Every referendum officer who wilfully counts any ballot papers as being cast to approve or disapprove a constitutional amendment Bill, which he or she knows or has reasonable cause to believe was not validly cast to approve or disapprove the constitutional amendment Bill, as the case may be, commits an offence and is liable on conviction on indictment to imprisonment for five years.

25. Offences from the Representation of the People Act

Without prejudice sections 22-24 of this Act provisions of the Representation of the People Act shall apply, to the extent appropriate, with respect to a constitutional referendum as if “election” were “constitutional referendum”, “election day” were “constitutional referendum day”, “ballot paper” were “constitutional referendum ballot paper” and “this Act” were “the Constitutional Referendum Act, 2016”; and any offence committed under any such provision for the purposes of this section shall constitute an offence under this Act.

PART VI

MISCELLANEOUS

26. Application of the Representation of the People Act

(1) Subject to section 16, for the purposes of a constitutional referendum the votes of the voters shall be cast, and the proceedings on the casting of votes shall be conducted, so far as practicable, as if such a referendum were a general election of members of the House of Representatives held pursuant to the Constitution and the Representation of the People Act; except that valid votes shall be cast in approval or disapproval of each constitutional amendment bill; there being no candidate for election in the referendum.

(2) The registration of voters conducted pursuant to the Constitution and the Representation of the People Act shall be utilised for determining entitlement to vote in a constitutional referendum.

(3) For the purposes of this Act and any subsidiary legislation made under it, the Representation of the People Act shall be construed consistently with subsections (1) and (2); subject to such deletions, and with such modification adaptations qualifications and exceptions, as may be prescribed in this Act or in subsidiary legislation made under this Act.

27. Expenses

Any expense incurred in carrying this Act into effect shall be defrayed out of expenses provided by Parliament.

28. Computation of time

(1) In reckoning time for the purposes of this Act, Sundays, bank holidays or days appointed for public thanksgiving or mourning shall be excluded.

(2) Where anything required by this Act or any rules thereunder to be done on any day falls to be done on any day excluded by subsection (1), that thing may be done on the next day, not being one of such excluded days.

29. Using electronic media for publishing

Where any provision of this Act stipulates that the Supervisor of Elections shall publish a document in the Gazette or an issue of a newspaper, the Supervisor of Elections may, in addition to complying with the relevant provision, publish the document on such electronic media, including internet facilities, as the Supervisor of Elections thinks fit.

30. Savings

Where anything in connection with the preparation or publication of any list, register, addendum or supplementary list under this Act or the Representation of the People Act is omitted to be done or cannot be done at the time required or is done before or after that time or is otherwise irregularly done in matter of form, the Governor-General may by order, at any time before or after the time within which the thing is required to be done, extend that time or validate anything so done before or after the time required or irregularly done in matter of form.

31. Disapplication of the Referendum Act

The Referendum Act shall not apply to a constitutional referendum.

PART VII
REGULATIONS

32. Governor-General may make Regulations

(1) The Governor-General may make Regulations—

- (a) as to the forms, other than the forms of the ballot papers, to be used for the purposes of a constitutional referendum;
- (b) for the modification of the provisions of the Representation of the People Act, or of any subsidiary legislation made thereunder, including deletions or omissions from, insertions into or additions to, repeals with or without replacements of or substitutions for, and any other amendments to, the provisions of that Act, or of any subsidiary legislation made thereunder, for the purposes of this Act;
- (c) for providing for the filing of petitions in the High Court for disputing any constitutional referendum or any return or statement or certificate showing the voting at such a referendum, for the hearing and determination of such petitions by that Court, and for appeals from that Court to the Court of Appeal; and
- (d) for any other matter appearing to the Governor-General to be necessary or expedient for the purposes of this Act.

(2) Regulations made pursuant to subsection (1) shall be subject to negative resolution of the House of Representatives.

SCHEDULE

FORM NO. 1

CONSTITUTIONAL REFERENDUM ACT

Writ for a Referendum on proposed alteration of the Constitution of Antigua and Barbuda
To the Supervisor of Elections

I command you to cause a bill for an Act entitled [here insert the title of the bill], being a bill, as one to alter certain provisions of the Constitution of Antigua and Barbuda, which needs to be approved on a referendum, to be submitted, according to the Constitution of Antigua and Barbuda and the Constitutional Referendum Act, 2016, in each constituency in the State, to the voters who are qualified to vote at referendums.

I appoint the following day and dates:

1. For the close of registration of persons to vote at the referendum: ...day the day
of 20...
2. For taking the votes of the voters on referendum day: ...day the day
of 20...
3. For the return of the writ:day the day of
20...

[Here insert Governor-General's title and the date]

Governor-General

By His Excellency's command

Schedule-continued

FORM NO. 2

CONSTITUTIONAL REFERENDUM ACT

BALLOT PAPER

Referendum on proposed alteration of the Constitution of Antigua and Barbuda

[Print Date], 20.....

DIRECTIONS TO VOTER

Make your mark to the right of the word "YES" or its symbol to approve the bill whose short title is given below or to the right of the word "NO" or its symbol to not approve the bill in the space provided under the question set out below.

DO YOU APPROVE THE [insert name of bill] 20.....FOR AN ACT PROPOSING TO ALTER THE CONSTITUTION OF ANTIGUA AND BARBUDA?

YES [symbol]

NO [symbol]



Official Mark

Schedule-continued
FORM NO. 3
CONSTITUTIONAL REFERENDUM ACT

BALLOT PAPER

Referendums on proposed alterations of the Constitution of Antigua and Barbuda

[Print Date], 20.....

DIRECTIONS TO VOTER

Make your mark to the right of the word “YES” or its symbol to approve the bills each of whose short title is given below or to the right of the word “NO” or its symbol to not approve each such bill in the space provided under the questions set out below.

1. DO YOU APPROVE THE [insert name of bill] 20.....FOR AN ACT PROPOSING TO ALTER THE CONSTITUTION OF ANTIGUA AND BARBUDA?

YES [symbol]

NO [symbol]

2. DO YOU APPROVE THE [insert name of bill] 20.....FOR AN ACT PROPOSING TO ALTER THE CONSTITUTION OF ANTIGUA AND BARBUDA?

YES [symbol]

NO [symbol]

3. DO YOU APPROVE THE [insert name of bill] 20.....FOR AN ACT PROPOSING TO ALTER THE CONSTITUTION OF ANTIGUA AND BARBUDA?

YES [symbol]

NO [symbol]

Official Mark

NO..... OF 2016

Constitutional Referendum Bill, 2016

Passed by the House of Representatives
on the day of 2016.

Passed by the Senate on the
day of 2016.

Speaker

President

Clerk to the House of Representative

Clerk to the Senate

EXPLANATORY MEMORANDUM

The Constitutional Referendum Bill 2016 is for an Act to provide for the conduct of constitutional referendums. These are referendums. To enable the people of Antigua and Barbuda to vote on whether they approve disapprove bills for Acts to alter any provisions of the constitutional instruments of Antigua and Barbuda whose alteration requires such approval. This is stipulated by the entrenching provisions of section 47 (5) of, and Schedule 1 to, the Constitution of Antigua and Barbuda.

The Bill contains 5 parts, 32 clauses, and a schedule with 3 forms.

Part I contains preliminary provisions, in **Clauses 1** and **2**. **Clause 1** provides the short title and commencement of the Act. **Clause 2** provides for the interpretation of terms to be used in the Act.

Part II provides for the procedures for holding a constitutional referendum. It contains **Clauses 4** to **15**. **Clause 3** provides generally for the taking of a vote by way of constitutional referendum on a constitutional amendment bill that is a Bill for an Act to alter any of the said entrenched provisions of the constitutional instruments. **Clause 4** provides for a writ of constitutional referendum to be issued by the Governor-General. **Clause 5** provides for the Supervisor of Elections to commence the process of preparing for the holding of a constitutional referendum. **Clauses 6** and **7** provide for the extending of the period for holding a constitutional referendum or to postpone the holding of a referendum.

Clause 8 addresses the entitlement of every person registered under the Representation of the People Act Cap. 286A to vote in a constitutional referendum. **Clauses 9** and **11** provide for the format of a constitutional referendum question and the ballot paper for presenting such a question. **Clause 10** provides for the holding of two or more constitutional referendums on the same referendum day.

Clause 12 caters for the use of symbols on ballot papers; **clause 13** for the colour-coding of constitutional amendment bills; and **clause 14** for putting an official mark on ballot papers.

Clause 15 provides for the appointment of referendum monitors, nominated by community organisations as there defined. Referendum monitors would perform a function comparable to that of an agent of a candidate in the holding of an election.

PART III provides for the procedures for the counting of votes, reporting and returning of a writ. It contains **Clauses 16 to 19**. The procedure is an adaptation of the procedure under the Representation of the People Act.

PART IV, comprising sections 20 and 21, provides for constitutional referendum petitions, in the event that there is a challenge to the conduct of the holding of a referendum.

PART V provides for the procedures for dealing with restricted and prohibited conduct in the discharge of duties and the exercise of rights for the purposes of a constitutional referendum. It contains **Clauses 22 to 25**. These are adapted from provisions of the Representation of the People Act on electoral offences. **Clauses 25** seeks to directly apply specified provisions of the Representation of the People Act to conduct of a constitutional referendum, maintain the penalties prescribed under the Act.

PART VI has miscellaneous provisions, in **Clauses 21 to 27**.

Clauses 27 provides that every expense incurred as a resulting of the holding of a constitutional referendum may be provided for by Parliament.

Clauses 28 provides for the computation of time.

Clauses 29 provides for notice to be published via electronic media in addition to the manner prescribed in the various provisions.

Clauses 30 provides for savings.

Clauses 31 disapplies the Referendum Act which regulates general referendums.

PART VII, Clause 32, provides for the Governor-General to make Regulations for the carrying out of the Act.

In the Schedule, Form 1 sets out the format of a writ of constitutional referendum, while Forms 2 and 3 give formats for ballot paper.

Hon. Steadroy C. O Benjamin
Attorney General and
Minister of Legal Affairs