

L.D. O 19/2010

AN ACT TO AMEND THE CONSTITUTION OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF SRI LANKA

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows:-

Short title.

1. This Act may be cited as the Eighteenth Amendment to the Constitution.

Amendment of
Article 31 of the
Constitution of
the Democratic
Socialist Republic
Sri Lanka.

2. The Constitution of the Democratic Socialist Republic Sri Lanka (hereinafter referred to as the "Constitution") is hereby amended in Article 31 thereof, as follows:-

(1) by the repeal of paragraph (2) of that Article; and

(2) in paragraph (3A) (a)(i) of that Article, -

(a) by the substitution for the words "at any time after the expiration of four years from the commencement of his first term of office" of the words "at any time after the expiration of four years from the commencement of his current term of office"; and

(b) by the substitution for the words "by election, for a further term." of the following:-

"by election, for a further term:

Provided that, where the President is elected in terms of this Article for a further term of office, the provisions of this Article shall *mutatis mutandis* apply in respect of any subsequent term of office to which he may be so elected."

Amendment of
Article 32 of the
Constitution.

3. Article 32 of the Constitution is hereby amended as follows:-

(1) by the repeal of paragraph (3) of thereof, and the substitution therefor of the following:-

"(3) The President shall by virtue of his office attend Parliament once in every three months. In the discharge of this function the President shall be entitled to all the privileges, immunities and powers of a member of

Parliament, other than the entitlement to vote, and shall not be liable for any breach of the privileges of Parliament or of its members.”; and

- (2) by the addition immediately after paragraph (3) thereof, of the following new paragraph:-

“(4) The President shall by virtue of his office, also have the right to address and send messages to Parliament.”.

Repeal of Chapter VIIA of the Constitution.

4. Chapter VIIA of the Constitution (Articles 41A to 41H) is hereby repealed.

Insertion of new Article 41A in the Constitution.

5. The following new Article is hereby inserted immediately after Article 41 of the Constitution and shall have effect as Article 41A thereof:-

“President to make the appointments in respect of the Commissions and offices referred to in the Schedules.

41A. (1) The Chairman and members of the Commissions referred to in Schedule I to this Article, and the persons referred to in Part I and Part II of Schedule II to this Article, shall be appointed to the Commissions and the Offices referred to in the said Schedules, by the President. In making such appointments, the President shall seek the observations of the following persons –

- (1) the Prime Minister;
- (2) the Speaker;
- (3) the Leader of the Opposition;
- (4) a nominee of the Prime Minister, who shall be a Member of Parliament; and
- (5) a nominee of the Leader of the Opposition, who shall be a Member of Parliament:

Provided that, the persons appointed in terms of sub-paragraphs (4) and (5) above shall be nominated in such manner as would ensure that the nominees would belong to communities which are communities other than those to which the persons specified in paragraphs (1), (2) and (3) above belong.

SCHEDULE I

1. The Election Commission.
2. The Public Service Commission.
3. The National Police Commission.
4. The Human Rights Commission of Sri Lanka.
5. The Permanent Commission to Investigate Allegations of Bribery and Corruption.
6. The Finance Commission.
7. The Delimitation Commission.

SCHEDULE II

PART I

1. The Chief Justice and the Judges of the Supreme Court.
2. The President and the Judges of the Court of Appeal.
3. The Members of the Judicial Service Commission, other than the Chairman.

PART II

1. The Attorney – General.
2. The Auditor - General.
3. The Parliamentary Commissioner for Administration (Ombudsman).
4. The Secretary – General of Parliament.

(2) Notwithstanding the provisions of paragraph (2) of Article 64 of the Constitution, the Speaker shall for the purposes of this Article, continue as Speaker on the dissolution of Parliament, until a Member of Parliament is elected to be the Speaker under paragraph (1) of the aforesaid Article. The new Speaker shall thereupon be the person whose views will be sought under sub-paragraph (2) of paragraph (1) of this Article. .

(3) Notwithstanding the dissolution of Parliament, the Leader of the Opposition shall for the purposes of this Article, continue as Leader of the Opposition, until such time after a General Election following such dissolution, a Member of Parliament is recognized as the Leader of the Opposition in Parliament. The new Leader of the Opposition shall thereupon be the person whose

views will be sought under sub-paragraph (3) of paragraph (1) of this Article..

(4) Notwithstanding the dissolution of Parliament, the nominee of the Prime Minister and the Leader of the Opposition respectively who are Members of Parliament shall continue as members until such time after a General Election following such dissolution Members of Parliament are elected to Parliament. The Prime Minister and the Leader of the Opposition shall thereupon respectively nominate two new Members of Parliament to be their nominees in terms of sub-paragraphs (4) and (5) of paragraph (1) of this Article..

(5) When the President seeks the observations of the persons referred to in paragraph (1) for the purpose of making the appointments of the Chairman and members of the Commissions referred to in Schedule I to paragraph (1) of this Article, he shall require them to convey to him their observations on the persons proposed by him for such appointments, within a period of one week from the date of such communication. If such persons fail to communicate their observations to him within the specified period, the President shall forthwith proceed to make the aforesaid appointments.

(6) Where the Leader of any recognized political party represented in Parliament desires to propose the name of any person for appointment as Chairman or member of a Commission referred to in Schedule I to paragraph (1) to this Article, he may within the period of one week specified above, forward to the Speaker the name of any person in relation thereto. The President may take such names into consideration when making such appointments.

(7) No person appointed to be the Chairman or member of a Commission referred to in Schedule I of this Article or any of the persons appointed to the posts referred to in Part I and Part

II of Schedule II to this Article shall be removed, otherwise than in the manner provided for in the Constitution or in any law enacted for such purpose. Where no such provision is made, such person shall be removed by the President.”.

Amendment of
Article 54 of the
Constitution.

6. Article 54 of the Constitution is hereby amended as follows:-

- (1) by the repeal of paragraph (1) thereof, and the substitution therefor of the following:-

“(1) There shall be a Public Service Commission (in this Chapter referred to as the “Commission”) which shall consist of not more than nine members appointed by the President, of whom, not less than three members shall be persons who have had over fifteen years experience as public officers. The President shall appoint one member as its Chairman.”;

- (2) in paragraph (4) thereof, by the substitution for the words “removed from office by the President on the recommendation of the Constitutional Council, or” the words “removed from office by the President, or”; and

- (3) in paragraph (7) thereof, by the substitution for the words “for the duration of such period on the recommendation of the Constitutional Council appoint” the words “for the duration of such period appoint”.

Amendment of
Article 55 of the
Constitution.

7. Article 55 of the Constitution is hereby repealed and the following Article substituted therefor:-

“Powers and
functions of the
Cabinet of
Ministers and of
the Commission

55. (1) The Cabinet of Ministers shall provide for and determine all matters of policy relating to public officers, including policy relating to appointments, promotions, transfer, disciplinary control and dismissal.

(2) The appointment, promotion, transfer, disciplinary control and dismissal of all Heads of Department shall, vest in the Cabinet of Ministers

(3). Subject to the provisions of the

Constitution, the appointment, promotion, transfer, disciplinary control and dismissal of public officers shall be vested in the Public Service Commission.

(4) The Commission shall not derogate from the powers and functions of the Provincial Public Service Commissions as are established by law.

(5) The Commission shall be responsible and answerable to Parliament in accordance with the provisions of the Standing Orders of Parliament for the exercise and discharge of its powers and functions. The Commission shall also forward to Parliament in ~~each~~ calendar year, a report of its activities in respect of such year.”.

Amendment of
Article 61F of the
Constitution.

8. Article 61F of the Constitution is hereby amended by the omission of the words “a police officer appointed by the National Police Commission” from the definition of the expression “public officer”.

Amendment of
Article 65 of the
Constitution.

9. Article 65 of the Constitution is hereby amended as follows :-

- (1) in paragraph (1) thereof, by the substitution for the words “shall, subject to the provisions of Article 41C, be appointed by the President,” of the words “shall be appointed by the President”; and
- (2) in paragraph (6) thereof, by the substitution for the words “President may, subject to the provisions of Article 41C, appoint a person” of the words “President may appoint a person”.

Amendment of
Article 91 of the
Constitution.

10. Article 91 of the Constitution is hereby amended in paragraph (1) thereof, by the repeal of sub-paragraph (d)(vb).

Amendment of
Article 103 of the
Constitution.

11. Article 103 of the Constitution is hereby amended in paragraph (1) thereof, by the substitution for the words “consisting of five members” of the words “consisting of three members”.

Amendment of
Article 104B of
the Constitution

12. Article 104B of the Constitution is hereby amended as follows:-

- (1) by the insertion immediately after paragraph (4) thereof, of the following new paragraph:-

“(4a) For the avoidance of doubt it is stated that any guideline issued by the Commission during the period commencing with the making of an Order for the holding of an election or the making of a Proclamation requiring the conduct of a Referendum, as the case may be, shall –

- (a) be limited to matters which are directly connected with the holding of the respective election or the conduct of a respective Referendum as the case may be; and
 - (b) not be connected directly with any matter relating to the public service or any matter within the ambit of administration of the Public Service Commission or the Judicial Service Commission, as the case may be, appointed under the Constitution.”; and
- (2) in paragraph (5), by the repeal of sub-paragraphs (b), (c) and (d) thereof and the substitution therefor of the following paragraph:-

“(b) It shall be the duty of any broadcasting or telecasting operator or any proprietor or published of a newspaper as the case may be, to take all necessary steps to ensure compliance with any guidelines as are issued to them under paragraph (a).”.

Amendment of
Article 107 of the
Constitution

13. Article 107 of the Constitution is hereby amended in paragraph (1) thereof, by the substitution for the words “shall, subject to the provisions of Article 41C, be appointed by the President by Warrant under his hand” of the words “shall be appointed by the President by Warrant under his hand”.

Amendment of
Article 109 of the
Constitution

14. Article 109 of the Constitution is hereby amended as follows:-

- (1) in paragraph (1) thereof, by the substitution for the words “the President shall, subject to the provisions of Article 41C, appoint,” of the words “the President shall appoint”; and
- (2) in paragraph (2) thereof, by the substitution for the words “the President may, subject to the provisions of Article 41C,

appoint” of the words “President may appoint a person”.

Amendment of
Article 111D of the
Constitution

15. Article 111D of the Constitution is hereby amended in paragraph (1) thereof, by the substitution for the words “appointed by the President subject to the provisions of Article 41C” of the words “appointed by the President”.

Amendment of
Article 111E of the
Constitution

16. Article 111E of the Constitution is hereby amended in paragraphs (5) and (6) thereof, by the omission therefrom the words “on the recommendation of the Constitutional Council”.

Amendment of
Article 153 of the
Constitution

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

- (1) in paragraph (1) thereof, by the substitution for the words “shall, subject to the provisions of Article 41C, be appointed by the President,” of the words “shall be appointed by the President”; and
- (2) in paragraph (4) thereof, by the substitution for the words “the President may, subject to the provisions of Article 41C, appoint” of the words “President may appoint”.

Amendment of
Article 154 of the
Constitution

18. Article 154 of the Constitution is hereby amended by the substitution for the words “the Public Service Commission” of the words, “the Public Service Commission, the Provincial Public Service Commissions”.

Amendment of
Article 154R of
the Constitution

19. Article 154R of the Constitution is hereby amended in sub-paragraph (c) of paragraph (1) thereof, by the substitution for the words “three other members who are appointed by the President on the recommendation of the Constitution Council, to represent” of the words “three other members appointed by the President, to represent”.

Amendment of
Article 155A of
the Constitution

20. Article 155A of the Constitution is hereby amended as follows:-

- (1) by the repeal of paragraph (1) thereof, and the substitution therefor of the following:-

“(1) There shall be a National Police Commission (in this Chapter referred to as “the Commission”) consisting of not more than seven members appointed by the President. The President shall appoint one member as the Chairman.”; and

- (2) in paragraph (4) thereof, by the substitution for the words “from office by the President on the recommendation of the Constitutional Council, or” of the words “from office by the President, or”;

Insertion of new Articles 155FF and 155FFF in the Constitution”.

21. The following new Articles are hereby inserted immediately after Article 155F of the Constitution and shall have effect as Articles 155FF and 155FFF thereof:-

“Powers of the Commission.

155FF. The Commission shall be empowered to entertain and investigate complaints from members of the public or any aggrieved person against a police officer or the police force, and shall provide redress in accordance with the provisions of any law enacted by Parliament. For this purpose the Commission may make rules to establish procedures for entertaining and investigating complaints from members of the public or any aggrieved person.

Commission to make rules.

155FFF. The Commission shall from time to time make rules for such matters which require rules to be made. Every such rule shall be published in the *Gazette*.”.

Amendment of Article 155G of the Constitution

22. Article 155G of the Constitution is hereby amended as follows:-

- (1) by the repeal of paragraph (1) thereof, and the substitution therefor of the following:-

“(1)(a) The appointment, promotion, transfer, disciplinary control and dismissal of police officers shall be vested in the Inspector – General of Police.

(b) The Inspector – General of Police shall not, in the exercise of his powers under this Article, derogate from the powers and functions assigned to each Provincial Public Service Commission, as and when such Commission is established under Chapter XVIIA.”;

- (2) by the repeal of paragraph (2) thereof;
- (3) in paragraph (3) thereof, -

- (a) by the substitution for the words "The Commission shall provide for" of the words "The Inspector – General of Police shall provide for"; and
- (b) by the substitution for the words "codes of conduct, and the standards to be followed in making promotions and transfers, as the Commission shall from time to time consider necessary or fit." of the words "Codes of Conduct and the criteria to be followed in making promotions or transfers as the Inspector – General of Police may from time to time consider necessary or fit."; and
- (4) in paragraph (4), by the substitution for the words "The Commission shall" of the words "The Inspector - General of Police shall"; and
- (5) by the substitution for the marginal note to that section of the following:-

"Powers of the Inspector – General of Police".

Amendment of
Article 155H of
the Constitution.

23. Article 155H of the Constitution is hereby repealed.

Replacement of
Article 155J of the
Constitution

24. Article 155J of the Constitution is hereby repealed and the following new section substituted therefor :-

"Delegation of
functions by the
Inspector –
General of
Police

155J (1) The Inspector - General of Police may, subject to such conditions and procedures as may be determined, delegate to any police officer, his powers of appointment, promotion, transfer, disciplinary control and dismissal in relation to any category of police officers:

Provided that the Inspector - General of Police may notwithstanding such delegation, exercise such powers where it appears to him to be so necessary,.

(2) The Inspector - General of Police shall cause any such delegation to be published in the *Gazette* including the conditions and procedures determined by him."

Amendment of
Article 155K of
the Constitution

25. Article 155K of the Constitution is hereby amended as follows:-

- (1) in paragraph (1) thereof, by the substitution for the words "may appeal to the Commission against such order" to the end of that paragraph, of the words "may appeal to the Public Service Commission in accordance with such rules as are made by the Public Service Commission in that behalf.";
- (2) in paragraphs (2) and (3) thereof, by the substitution for the words "The Commission" wherever such words appear in therein, of the word "The Inspector – General of Police.";
- (3) by the repeal of paragraph (4) thereof.

Replacement of
Articles 155L,
and 155M of the
Constitution

26. Articles 155L and 155M OF the Constitution are hereby repealed and the following Articles substituted therefor:-

"Appeals to
the Public
Service
Commission
and the
Administrative
Appeals
Tribunal.

155L. (1) Any Police Officer aggrieved by any order relating to a promotion, transfer or any order on any disciplinary matter or dismissal made by the Inspector – General of Police in respect of himself, may appeal therefrom, to the Public Service Commission.

(2) Any Police Officer aggrieved from the decision of the Public Service Commission on an appeal under this Article, may appeal therefrom to the Administrative Appeals Tribunal.

Saving of
existing rules
and
regulations.

155M. All rules and regulations and procedures in force on the date of the commencement of this Article shall be deemed to continue to be operative, until rules, regulations and procedures are made hereunder."

Amendment of
Article 156 of the
Constitution

27. Article 156 of the Constitution is hereby amended as follows:-

- (1) in paragraph (1) thereof, by the substitution for the words "shall, subject to the provisions of Article 41C, be appointed by the President," of the words "shall be appointed by the President";

- (2) in paragraph (5) thereof, by the substitution for the words “the President shall, subject to the provisions of Article 41C, appoint” of the words “the President shall appoint”.

Avoidance of
doubts.

28. For the avoidance of doubts it is hereby declared that :-

- (1) the members of the Judicial Service Commission established under Article 112 of the Constitution and holding office on the date prior to the commencement of this Act, shall from and after the date of the commencement of this Act, continue to hold office as such members and to exercise and discharge the powers and functions vested in the Commission under the Constitution;
- (2) the Chief Justice and the other Judges of the Supreme Court and the President and the other Judges of the Court of Appeal and the Judges of the High Court holding office on the date prior to the commencement of this Act, shall from and after the date of the commencement of this Act, continue to hold office and exercise and discharge the powers and functions vested in them under the Constitution;
- (3) every person holding office as the Secretary of the Judicial Service Commission, the Attorney – General, the Auditor – General, the Inspector – General of Police, the Parliamentary Commissioner for Administration (Ombudsman) and the Secretary – General of Parliament holding office on the date prior to the commencement of this Act, shall from and after the date of the commencement of this Act, continue to hold office and exercise and discharge the powers and functions vested in them under the Constitution;
- (4) the person holding office as the Commissioner on the date prior to the commencement of this Act, shall from and after the date of the commencement of this Act, continue to hold office and exercise and discharge the powers and functions vested in him under the Constitution as Commissioner of Elections until the Election Commission is Constituted in terms of Article 103 and from and after the date of the constitution of the Election Commission, cease to hold office as the Commissioner of Elections;

Provided that the President may, if he considers it expedient to do so or if the exigencies of a situation so requires it, at any time prior to the constitution of the Election Commission, appoint to the office of Commissioner of Elections, a person holding office as a Deputy Commissioner of Elections to discharge the functions presently being conferred on the Commission by the Constitution.

- (5) all matters pertaining to the appointment, promotion, transfer, disciplinary control and dismissal of Police Officers pending before the National Police Commission established under Chapter XVIIA of the Constitution on the date prior to the commencement of this Act, shall from and after the date of the commencement of this Act, be vested with the Inspector – General of Police and any appeal made by a police officer pending before the National Police Commission on the date prior to the commencement of this Act, shall, from and after the date of the commencement of this Act, stand transferred to the Public Service Commission and shall be heard and completed accordingly;
- (6) all appointments made in respect of the Commissions and posts described in the foregoing paragraphs of this section, from and after the expiration of the term of office of the Constitutional Council appointed in terms of Article 41A of the Constitution, during the period commencing on the day on which the term of the aforesaid Council expired and the date of the coming into operation of this Act, shall be deemed to be valid and effectual;
- (7) the staff of the Public Service Commission shall be members of the public service and be subject to the rules as are applicable to a public office in relation to the rank of such office;
- (8) from and after the appointment of the Election Commission in terms of the Constitution, the Department of Elections shall be deemed to be the staff of such Commission for the purposes of Chapter XIVA of the Constitution and shall whenever it is so required for the duration of an election or a referenda perform the functions of a Secretariat.

Sinhala text to
prevail in case of
inconsistency.

29. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

ENDORSEMENT UNDER ARTICLE 122 OF THE
CONSTITUTION

It is hereby certified that in the view of the Cabinet of Ministers,
the above Bill is urgent in the national interest.

August, 2010.

S. Abeysinghe
Secretary to the Cabinet of Ministers.