



**BERMUDA
1995 : 24**

INDEPENDENCE REFERENDUM ACT 1995

[10 April 1995]

ARRANGEMENT OF SECTIONS

- 1 Short title
- 2 Holding of referendum
- 3 Application of Act No 23 of 1978
- 4 Regulations
- 5 Expenses

First Schedule
Second Schedule

WHEREAS it is expedient to provide for the holding of a referendum on the issue of Independence for Bermuda:

[Words of enactment omitted]

Short title

- 1 This Act may be cited as the Independence Referendum Act 1995.

Holding of referendum

- 2 (1) A referendum shall be held on the question whether or not Independence is favoured for Bermuda.

(2) The ballot paper to be used for the purpose of the referendum shall be in the form set out in the First Schedule.

(3) The persons entitled to vote in the referendum are those who, on the day of the holding of the referendum, would be entitled to vote as electors at a parliamentary election in a constituency.

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(4) The Premier shall by notice published in the Gazette appoint a day for the holding of the referendum, being a day—

(a) not earlier than the thirtieth day next following the date on which that notice is first so published; and

(b) not later than—

(i) the sixtieth day next following that date; or

(ii) 31 December 1995,

whichever is earlier.

(5) The question specified in subsection (1) will not have been answered by the referendum in favour of Independence for Bermuda unless—

(a) forty per centum or more of those entitled under subsection (3) to vote in the referendum vote in the referendum in favour of Independence for Bermuda; and

(b) the number of persons voting in the referendum in favour of Independence for Bermuda constitutes a majority of persons voting in the referendum.

Application of Act No 23 of 1978

3 For the purposes of the referendum the votes of the persons voting shall be cast, and the proceedings shall be conducted, so far as may be as if the referendum were a general election of members of the House of Assembly; and the Parliamentary Election Act 1978 [*title 2 item 11*] and any regulations in force under that Act shall for those purposes be construed accordingly.

Regulations

4 (1) Without prejudice to section 3, the Minister responsible for Home Affairs ("the Minister") may by regulations—

(a) apply, in relation to the referendum, with such modifications, exceptions, omissions and additions as may be specified in the regulations, any provision of the Parliamentary Election Act 1978 [*title 2 item 11*] and any regulations made under that Act;

(b) make such other provision as to the conduct of the referendum as may appear to him to be expedient.

(2) Regulations made under subsection (1) are subject to the negative resolution procedure.

(3) Notwithstanding subsections (1) and (2), the Independence Referendum Regulations 1995 set forth in the Second Schedule have full legal effect forthwith by virtue of this subsection as regulations made

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under and in accordance with subsections (1) and (2), without resort to the negative resolution procedure.

(4) Subsection (3) does not affect the power of the Minister in future to make regulations under subsection (1) amending, modifying or otherwise affecting the said Independence Referendum Regulations 1995.

Expenses

5 Any expenses incurred in carrying this Act into effect shall be defrayed out of moneys provided by the Legislature.

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FIRST SCHEDULE (Section 2(2))

FORM OF BALLOT PAPER

ARE YOU IN FAVOUR OF INDEPENDENCE FOR BERMUDA?

YES:

NO:

THE INDEPENDENCE REFERENDUM REGULATIONS 1995

ARRANGEMENT OF REGULATIONS

- 1 Citation
- 2 Interpretation
- 3 Conduct of referendum
- 4 Application of certain statutory provisions to the referendum
- 5 Observers

SCHEDULE

Citation

1 These Regulations may be cited as the Independence Referendum Regulations 1995.

Interpretation

2 Unless the contrary intention appears, in these Regulations, and in any provision applied by these Regulations—

"the Act" means the Independence Referendum Act 1995;

"designated central counting station" means the place designated by the Minister by notice published in the Gazette as the place where the votes in the referendum shall be counted;

"the Minister" means the Minister responsible for Home Affairs;

"parliamentary elector" or "elector" means a person who is entitled to vote in the referendum;

"observer" means a person appointed in accordance with regulation 5;

"polling room" means the place appointed by notice for the holding of the referendum in a constituency;

"the referendum" means the referendum to be held under the Act;

"the Registrar" has the meaning ascribed to it in section 1(1) of the Parliamentary Election Act 1978 [*title 2 item 11*];

"Returning Officer" has the meaning ascribed to it in section 1(1) of the Parliamentary Election Act 1978 [*title 2 item 11*].

Conduct of referendum

3 (1) The functions which, in relation to a general election, are conferred on the Registrar by any provision of the Parliamentary Election

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Act 1978 [title 2 item 11] as applied by these Regulations shall, in relation to the referendum, be discharged by that officer.

(2) The Registrar shall, in addition to the functions conferred upon him by paragraph (1) of this regulation, be responsible for conducting the count of votes cast in the referendum and for certifying the total of the ballot papers and the respective answers relating to the referendum.

(3) The Minister shall in writing appoint such persons as may be necessary—

- (a) as Returning Officers for the purpose of conducting the referendum in a constituency;
- (b) to assist the Registrar in conducting the count of votes cast in the referendum.

(4) The functions which in relation to a general election are conferred respectively on Returning Officers and presiding officers by any provision of the Parliamentary Election Act 1978 [title 2 item 11] as applied by these Regulations shall, in relation to the referendum, be discharged by those officers respectively.

Application of certain statutory provisions to referendum

4 (1) The provisions of the Parliamentary Election Act 1978 [title 2 item 11] and the Parliamentary Election Rules 1979 specified in column 1 of the Schedule shall, subject to the modifications or exceptions (if any) specified in relation to those provisions in column 2 of the Schedule, apply in connexion with the referendum, but any reference to a candidate, nomination, election agent or polling agent shall, unless the context requires otherwise, be disregarded.

(2) Unless the contrary intention appears, in these Regulations and in the provisions applied by this regulation—

- (a) any reference to an election, parliamentary election or poll shall be construed as a reference to the referendum;
- (b) any reference to a constituency shall be construed as a reference to the area for which the relevant Returning Officer acts;
- (c) any reference to the election room shall be construed as a reference to a polling room.

Observers

5 (1) The Minister may make arrangements for the appointment of persons to observe the conduct of the referendum, the verification of the ballot paper accounts and the counting of the votes.

(2) Any such appointment shall be in writing and shall be signed by the Minister.

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SCHEDULE

(Regulation 4)

Application and Modification of Provisions of the Parliamentary Election Act 1978 and Regulations made under that Act.

Provision applied and subject matter	Modification
<i>The Parliamentary Election Act 1978 [title 2 item 11]</i>	
Section 2 (Meaning of resident and ordinarily resident)	
Section 4 (Entitlement to vote)	
Section 25 (Voter's identification card)	
Section 27 (Issue of writs of ...)	Omit and substitute "27(1) On the issue of the notice of the referendum under section 2(4) of the Act, the Minister shall by notice published in the Gazette appoint the polling room for the holding of the referendum in a constituency. (2) The place appointed for the holding of a referendum in a constituency shall be some convenient building or part of a building within, or in the opinion of the Minister conveniently near, the boundary of the constituency concerned, not being a building licensed for the sale of intoxicating liquor."
Section 29 (Duties of Return- ..)	In subsections (1) and (2), omit "executing a writ of election" and substitute "conducting the referendum in a constituency".

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Section 30	(Notice of election)	Omit and substitute— "30 The Registrar shall also give notice of the holding of the referendum by publication of a notice in two successive issues of the Gazette and in at least one other newspaper circulating in Bermuda specifying the day for the holding of the referendum and the location of the polling place in a constituency."
Section 31	(Delivery of parliamentary registers	In subsection (1), omit "eleven o'clock in the forenoon of nomination day in any parliamentary election" and substitute "nine o'clock in the forenoon of the polling day in the referendum".
Section 36	(Taking a poll in	Omit subsection (1).
Section 39	(Duration of poll)	Delete "seven o'clock in the afternoon" from subsection (1) and substitute "nine o'clock in the evening".
Section 40	(Advanced polls for sick, infirm and	Delete subsections (3) and (5) and substitute— " (3) Advanced polls for voters intending to be absent from Bermuda shall be held at such places and on such dates as the Registrar may by notice published in the Gazette appoint for the purpose, and it shall be lawful for every such voter, on production of a certificate issued under subsection (2), to record his vote at such an advanced poll. (5) The Registrar shall invite the a
Section 41	(Advanced polls for incapacitated vo-	In subsection (1), delete "place, and on such date not earlier than seven days prior to the polling day," and substitute "places and on such dates".
Section 42	(Conduct of ad-	Omit subsections (1), (2) and (3) and substitute the following—

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"(1) At any advanced poll held in accordance with section 40 or 41 a ballot box shall be provided and at the close of such advanced poll the ballot papers shall without any examination be placed in a packet and sealed by the officer conducting the poll, such packet clearly designating the number of ballot papers it contains.

(2) Each sealed packet of ballot papers taken at an advanced poll shall be immediately given by the officer conducting the poll to the Registrar to be kept intact in his office until delivery by him on the polling day in the referendum to the designated central counting station.

(3) The Registrar shall open every packet of ballot papers delivered to him pursuant to subsection (2) immediately before the count of the ballots for all areas in the referendum and without examining them, in the presence of observers and such other persons as are lawfully in the designated central counting station at that time, place the ballot papers in the ballot box which contains all the other ballot papers."

- Section 43 (General duties of .. poll) In subsection (1), omit the words "and the counting of the votes".
- Section 44 (Adjournment of)
- Section 45 (Rules for taking a .)
- Section 46 (Ballot papers) In subsection (1), omit the words "in the prescribed form showing the full names of all the nominated candidates in alphabetical order" and substitute "in the form set out in the First Schedule to the Act".
Omit subsection (2).

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Section 47	(Premises not to be used as committee	In subsection (3), omit the words "promoting the election of any candidate nominated in a parliamentary election" and substitute "the referendum".
Section 48	(Issue of ballot	
Section 49	(Identification of	
Section 50	(Challenge of	In subsection (1), delete the words "at the request of the election agent of any candidate or". Omit subsection (2).
Section 51	(Marking the ballot paper)	Omit subsection (2).
Section 52	(Incapacitated	
Section 53	(Spoilt ballot	
Section 54	(Void ballot	For paragraph (1)(b), substitute— "(b) on which more than one vote is given; or". In paragraph (1)(d), omit from "sufficient" down to "for whom" and substitute "clarity how". In paragraph (2)— (i) omit "in respect of each candidate voted for". (ii) omit "for one or more of the candidates, as the case may be," and substitute "for or against the question".
Section 55	(Arrest of voter for .	In subsection (1) omit — (i) "a candidate or his election agent declares to the Returning Officer that he" and substitute "the Returning Officer" (ii) "and undertakes to substantiate the charge in a court of law,".

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Section 56 (Count of ballots)

For section 56 substitute—

"56(1) Immediately after the close of the poll, the Returning Officer shall—

- (a) seal the ballot box so as to prevent the introduction of additional ballot papers and shall take charge of such box, and shall immediately convey such box to the designated central counting station and there he shall turn over the box in its sealed condition to the Registrar;
- (b) seal up in separate packets all—
 - (i) spoilt ballot papers in his possession,
 - (ii) unused ballot papers in his possession,

and shall endorse on each packet a description of its contents and the name of the constituency and deliver all the aforesaid packets so endorsed to the Registrar.

(2) Upon receipt of a sealed ballot box from a Returning Officer under subsection (1), the Registrar shall break the seal thereon in the presence of observers and of any other persons who are lawfully in the central counting station at that time and place all the ballot papers therein contained in the appropriate ballot box which shall be provided, and in such box all the ballot papers removed from the ballot boxes for the areas in the referendum shall be placed and mixed together for the purpose of being counted.

(3) When all the ballot boxes from all the polling stations have been received by the Registrar and dealt with in accordance with subsection (2), and not before, the Registrar shall then ascertain the result of the poll by counting the votes and the respective answers given by valid votes.

(4) When the result of the poll has been ascertained the Registrar shall forthwith publicly declare that result and shall subsequently by notice published in the Gazette, publish the result."

Section 60 (Secrecy during

In subsection (1)—

- (i) omit "candidate" and "agent" wherever they occur;
- (ii) paragraph (a), omit "the candidate for whom" and substitute "how";
- (iii) paragraph (c), omit "name of the candidate for or against whom" and substitute "manner in which";
- (iv) paragraph (d), omit "candidate for whom" substitute "manner in which";
- (v) paragraph (e), omit "person by whom" and substitute "manner in which".

In subsection (2) omit "a political party" and substitute "or opposition to the referendum".

In subsection (3)(b), omit "name of the candidate for whom" and substitute "manner in which".

In subsection (3)(c), omit "declare for whom" and substitute "declare the manner in which"

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Section 61	(Misconduct at	In paragraph (a) of subsection (1), delete sub-paragraphs (i) to (v) and substitute— "(i) interferes with a voter who is engaged in voting; or (ii) obtains or attempts to obtain in a polling room information as to the manner in which a voter is about to vote or has voted; or (iii) directly or indirectly induces or attempts to induce any voter to display his ballot paper so as to show the manner in which the voter has voted; or (iv) behaves in a violent, offensive or disorderly manner in or about, or within fifty metres of, a polling room or the designated central counting station, or improperly disturbs or impedes the proceedings; or (v) fails to leave a polling room when requested to do so by the Returning Officer, or fails to leave the designated central counting station when requested to do so by the Registrar;"
Section 62	(Returning Officer ..	
Section 63	(No person to carry offensive weapons .	In subsection (2)(a), insert after "propaganda" "relating to the referendum".
Section 64	(Bribery)	In paragraph (c), omit "the election of any person" and substitute "a specific result".
Section 65	(Undue influence)	
Section 66	(Punishment for	
Section 68	(Personation and ...	Omit paragraphs (a) and (b).

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Section 69	(Offences relating ..	
Section 70	(Supplying	
Section 71	(Disqualifications)	
Section 73	Breaches of official	
Section 74	(Registrar to retain documents)	
Section 77	(Duty of Commis- ...	Omit "issue of a writ of election under this Act" and substitute "the day for the holding of the referendum has been published in the Gazette under section 2(4) of the Act".

SCHEDULE

Paragraph 2	Omit sub-paragraph (1)(a) and substitute — "(a) an adequate number of tables is provided in the polling station for use by officers in, and by observers in observing, the checking of the credentials of, and the handing out of ballot papers to, electors;"
Paragraph 3	
Paragraph 4	Delete sub-paragraph (1) and substitute— " (1) Except for the pur- pose of voting, no person other than a person authorised by the Parliamentary Registrar or the Returning Officer may be present in a polling room during the taking of the poll, or approach nearer than seven metres to any of the doors of a polling room during the hours that the poll is open."
Paragraph 5	Omit "after placing therein any ballot papers which may be delivered to him in respect of an advanced poll,".
Paragraph 6	
Paragraph 7	

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Paragraph 8	Omit ", and subject to any challenge under section 50,".
Paragraph 9	
Paragraph 10	Omit and substitute — "10 At the count of votes the Registrar shall endorse any ballot paper appearing to him to be void under section 54 with the word "rejected".
Paragraph 11	Omit and substitute— "11(1) On the completion of the counting of the votes the Registrar shall seal up in separate packets all— <ul style="list-style-type: none">(a) counted ballot papers;(b) rejected ballot papers;(c) spoiled ballot papers;(d) unused ballot papers in his possession, and shall endorse on each packet a description of its contents and the date of the referendum. (2) The Registrar shall then deliver all the aforesaid packets so endorsed to the Secretary to the Cabinet together with a statement showing the total number of ballot papers prepared by him for the referendum."

The Parliamentary Election Rules 1979

First Schedule, Form 6

[Schedule amended by BR38/1995 effective 23 June 1995]

*[Amended by
BR 38/1995]*