

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

ANTIGUA AND BARBUDA



**THE CONSTITUTION OF ANTIGUA AND BARBUDA (AMENDMENT) BILL,
2018**

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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 ðCCJ appeals clauseö. The Bill would repeal section 122 and replace it, deleting the words ðHer Majesty in Councilö wherever they appear in section 122, and in each case substituting the words ðthe Caribbean Court of Justiceö. 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 ðshall be final and not subject to any appealö. 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 ðPuisne Judgeö with the expression ðHigh Court Judgeö. 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

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 (öCCJ AJö) 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 öHer Majesty in Councilö, UKPC, which may be called the öUKPC appeals clauseö.

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”.**

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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
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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
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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

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-

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

(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 öPuisne Judgeö the expression öHigh Court Judgeö 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 by the House of Representatives
on the , 2018.

Passed by the Senate
on the , 2018

Speaker.

President.

Clerk to the House of Representatives

Clerk to the Senate.