

A BILL

entitled

MUNICIPALITIES REFORM ACT 2019

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WHEREAS it is expedient to abolish municipal elections, to provide for the appointment of Members of the Corporations, to make consequential amendments to the Municipalities Act 1923, and to make certain directions given by the Minister to a Corporation subject to parliamentary scrutiny;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

Citation and interpretation

- 1 (1) This Act may be cited as the Municipalities Reform Act 2019.
- (2) In this Act, "the principal Act" means the Municipalities Act 1923.

Appointment of Members and abolition of municipal elections

- 2 (1) No municipal election shall be held in 2019 or thereafter (other than the extraordinary municipal election that was held on 5 February 2019).

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(2) Elected Members shall continue to hold office in accordance with section 17A (tenure of office of elected Members to end on 13 May 2019) of the principal Act, which is inserted by section 7 of this Act.

(3) The initial appointment of Members under section 17B (appointment and tenure of office) of the principal Act, which is inserted by section 7 of this Act, shall take effect on 14 May 2019.

(4) In consequence of the appointment of Members and the abolition of municipal elections, the principal Act is amended as set out in sections 3 and 4 and sections 6 to 11 of this Act.

(5) For the avoidance of doubt, in this section “extraordinary municipal election” and “municipal election” have the meanings assigned to those expressions immediately before being repealed by section 3 of this Act.

Amends section 1

3 Section 1(1) of the principal Act is amended by repealing the definition of each of the following expressions—

- (a) “business ratepayers’ Councillor”;
- (b) “business ratepayers’ election”;
- (c) “business ratepayers’ register”;
- (d) “extraordinary municipal election”;
- (e) “mayoral election”;
- (f) “municipal election”;
- (g) “municipal elector”;
- (h) “municipal register”;
- (i) “municipal residents’ election”;
- (j) “municipal residents’ register”;
- (k) “nominee”;
- (l) “ordinary municipal election”;
- (m) “registered business ratepayer”;
- (n) “registered municipal resident”;
- (o) “residents’ Councillor”; and
- (p) “subsidiary”.

Amends section 7

4 Section 7 of the principal Act is amended—

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- (a) in subsection (4)(b), by deleting “elected at a municipal election” and substituting “appointed”; and
- (b) in subsection (8), by deleting “and Councillor elect”.

Amends section 7AA

5 Section 7AA of the principal Act is amended—

- (a) in subsection (1A)(a), by deleting “shall” and substituting “where it is not for municipal purposes, shall”; and
- (b) by inserting after subsection (3)—

“(3A) Directions referred to in subsection (3)(aa) shall be subject to the negative resolution procedure.”.

Repeals sections 9 to 9I and 17

6 The following sections of the principal Act are repealed—

- (a) section 9 (municipal elections);
- (b) section 9A (eligibility to vote in municipal elections);
- (c) section 9B (application of Parliamentary Election Act 1978 as modified by order);
- (d) section 9BA (registration of municipal residents);
- (e) section 9C (registration of business ratepayers);
- (f) section 9D (requirements for registration in the business ratepayers’ register);
- (g) section 9E (registration of persons in business ratepayers’ register);
- (h) section 9F (maintenance of business ratepayers’ register);
- (i) section 9G (objections to registration);
- (j) section 9H (application of Parliamentary Election Rules 1979);
- (k) section 9I (false statements etc.); and
- (l) section 17 (tenure of office).

Inserts sections 17A and 17B

7 The principal Act is amended by inserting after the repealed section 17—

“Tenure of office of elected Members to end on 13 May 2019

17A (1) A person who holds office as an elected Member of a Corporation on the date this section comes into operation, unless he sooner resigns or otherwise ceases to hold office, shall continue to hold office until 13 May 2019 and, at the end of that day, he shall cease to hold office.

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(2) The Member may sooner resign his office by giving notice of resignation in accordance with subsection (3).

(3) A Member may resign his office by notice in writing addressed to the Minister, and the Member shall cease to hold office on the date of delivery of the notice to the Minister.

(4) Notwithstanding any vacancy in the membership of a Corporation during the period 6 February 2019 to (and including) 13 May 2019, the Corporation shall during that period be deemed to be duly constituted.

(5) Without prejudice to sections 7B(6), (6A) or (6B), if, at any time during the period referred to in subsection (4), a Corporation has fewer than five Members or is otherwise unable to constitute a quorum for meetings, the Minister may, on giving written notice to the Corporation of his assumption of control, take temporary control of the Corporation and its governance until the initial appointment of Members under section 17B takes effect (on 14 May 2019).

(6) A notice of assumption of control under subsection (5)—

- (a) shall be taken to be properly given if it is given to the secretary or other responsible officer of the Corporation;
- (b) shall, as soon as practicable after it is given to the Corporation, be published in the Gazette; and
- (c) for the avoidance of doubt, is not a statutory instrument for the purposes of the Statutory Instruments Act 1977.

(7) Where the Minister has control of the Corporation under subsection (5), he shall act in the place of the Corporation and any such acts shall be deemed to be the acts of the Corporation and, without prejudice to the generality of the foregoing, the Minister may do anything that appears to him necessary to secure that the Corporation's functions are exercised and performed in an efficient manner, or to discontinue or restrict any of its activities.

Appointment and tenure of office

17B (1) The Minister shall, in accordance with the Fourth Schedule, appoint Members (the Mayor and the eight Councillors) of each Corporation, and the initial appointment of Members shall take effect on 14 May 2019.

(2) The Fourth Schedule (appointment and tenure of office) has effect.”.

Amends section 18

8 Section 18 of the principal Act is amended—

- (a) in subsection (1), by deleting “nomination as a candidate in an election for” and substituting “appointment to”;
- (b) in subsection (2)—

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- (i) by deleting “elected or being nominated for election” and substituting “appointed”;
 - (ii) in paragraph (c), by deleting “; or” and substituting a full stop; and
 - (iii) by repealing paragraph (d); and
- (c) in subsection (3), by deleting “elected” and substituting “appointed”.

Repeals section 18A

9 Section 18A (determination of proportion of business ratepayers’ Councillors to residents’ Councillors) of the principal Act is repealed.

Amends section 19

10 Section 19 of the principal Act is amended—

- (a) in subsection (1)(c), by deleting “section 17(3) and (4)” and substituting “section 17A(3) or paragraph 6 of the Fourth Schedule”; and
- (b) in subsection (2)—
 - (i) in paragraph (b), by deleting “; or” and substituting a comma;
 - (ii) by repealing paragraph (c); and
 - (iii) by deleting “, in the case of the Mayor, and the Mayor in any other case, shall forthwith by notice published in the Gazette declare the office to be vacant” and substituting “shall forthwith give written notice of the vacancy to the Minister”.

Inserts Fourth Schedule

11 The principal Act is amended by inserting after the Third Schedule—

“FOURTH SCHEDULE

(section 17B)

APPOINTMENT AND TENURE OF OFFICE

Minister to appoint Members

1 (1) The Members (the Mayor and the eight Councillors) of each Corporation shall be appointed as follows—

- (a) the Mayor and four Councillors shall be appointed by the Minister, acting in his discretion, and shall be persons he is satisfied have the skills and experience to carry out the duties of Mayor or Councillor (as the case may be) effectively and efficiently; and
- (b) four Councillors shall be appointed by the Minister acting on the recommendation of the Selection Committee,

and the initial appointments shall take effect on 14 May 2019.

(2) The provisions of this Schedule have effect in respect of the initial appointments referred to in subparagraph (1) and any subsequent appointment of a person as a Member.

(3) For the avoidance of doubt, a person who held office as a Member before 14 May 2019 is eligible for appointment as a Member.

(4) In this paragraph, the “Selection Committee” means a Selection Committee appointed under paragraph 2.

Selection Committee

2 (1) For the purposes of the appointment of the Councillors referred to in paragraph 1(1)(b), the Minister shall, in respect of each Corporation, from time to time appoint a Selection Committee (hereinafter in this paragraph referred to as “the Committee”) consisting of three members, one of whom shall be appointed as the head of the Committee.

(2) The persons appointed to the Committee shall be individuals who reside, do business, or work, in the municipal area of the Corporation and who the Minister believes will carry out the functions of the Committee effectively and efficiently.

(3) The functions of the Committee shall be to—

(a) invite nominations from the general public, through advertisement and direct invitation, of persons to serve on the Corporation as Councillors; and

(b) review all nominations, interview nominees, and recommend to the Minister the persons to serve on the Corporation as Councillors.

(4) The criteria for the selection of Councillors by the Committee shall be determined by the Minister.

(5) The Committee may determine its own procedure.

(6) Fees shall be paid to the members of the Committee in accordance with the Government Authorities (Fees) Act 1971 as if it were a body listed in the First Schedule to that Act.

Additional criteria for appointment

3 The Minister shall appoint a person as a Member only if—

(a) he is listed in the parliamentary register for Bermuda, and is not disqualified from holding office under section 18(2); and

(b) in the case of a Councillor referred to in paragraph 1(1)(b), the Minister is satisfied that he has the skills and experience to carry out the duties of a Councillor efficiently and effectively.

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Tenure and reappointment

4 (1) Subject to this Act, a Member shall, unless he resigns or his appointment is sooner terminated, be appointed for a term of two years.

(2) A person is eligible for reappointment as a Member.

Temporary appointment

5 In the case of absence or inability of any Member to act, the Minister may appoint another person (in like manner to the person being replaced) to act temporarily in his place.

Resignation

6 A Member may resign his office by notice in writing addressed to the Minister, and the Member shall cease to hold office on the date of delivery of the notice to the Minister.

Appointment for unexpired period of term

7 The Minister shall, as soon as practicable after a Member resigns or otherwise ceases to hold office, appoint another person (in like manner to the person being replaced) to hold that office for the unexpired period of the Member's term.

Vacancy or defect in appointment not to affect validity of proceedings

8 Subject to section 7, the validity of any proceedings of the Corporation shall not be affected by any vacancy among the Members or any defect in the appointment of a Member.

Removal

9 The Minister, acting after consultation with the Corporation, may remove a Member from office if he is satisfied that the Member—

- (a) is disqualified for appointment under section 18(2); or
- (b) is otherwise unable, unfit or unwilling to carry out his functions as Mayor or Councillor (as the case may be).

Appointments and vacancies to be published in Gazette

10 The Minister shall cause to be published in the Gazette—

- (a) the names of every person appointed to the office of Mayor or Councillor of a Corporation; and
- (b) when any such office becomes vacant, notice thereof.”.

Revokes Municipalities (Election) Order 2015

12 The Municipalities (Election) Order 2015 is revoked.

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EXPLANATORY MEMORANDUM

This Bill would abolish municipal elections, provide for the appointment of Members of the Corporations, and make consequential amendments to the Municipalities Act 1923 (“the principal Act”). It would also make certain directions given by the Minister to a Corporation subject to parliamentary scrutiny.

Clause 1 is self-explanatory.

Clause 2 abolishes municipal elections. Elections are replaced by selection and appointment of Members. Apart from clause 5, the remainder of this Act makes consequential amendments.

Clause 3 amends section 1(1) of the principal Act to repeal various definitions that are applicable only to municipal elections as there will be no more municipal elections.

Clause 4 amends section 7 of the principal Act. Subsections (4)(b) and (8) are amended to delete references to being elected and to insert a reference to being appointed.

Clause 5 amends section 7AA of the principal Act by amending subsection (1A)(a) and inserting subsection (3A). The amendment to subsection (1A)(a) clarifies that if an act or thing done by a Corporation would otherwise not be construed as being for municipal purposes, it will be deemed to be for municipal purposes if done under a direction by the Minister. A direction will have legislative effect, and therefore be a statutory instrument and subject to parliamentary scrutiny, if it expands the meaning of “municipal purpose” by directing the Corporation to do anything that would otherwise not be for a “municipal purpose” (see the Privy Council decision of *Mexico Infrastructure Finance LLC v The Corporation of Hamilton* [2019] UKPC 2, at paragraphs 57 to 59, which construes “municipal purpose” very narrowly). Subsection (3A) therefore provides that directions given by the Minister to a Corporation under section 7AA(3)(aa) of the principal Act (directing the Corporation to do any acts or things that the Minister, acting under the general authority of the Cabinet, requires the Corporation to do) are statutory instruments subject to parliamentary scrutiny by the negative resolution procedure.

Clause 6 repeals the following sections of the principal Act, which currently provide for municipal elections, as there will be no more municipal elections: section 9 (municipal elections); section 9A (eligibility to vote in municipal elections); section 9B (application of Parliamentary Election Act 1978 as modified by order); section 9BA (registration of municipal residents); section 9C (registration of business ratepayers); section 9D (requirements for registration in the business ratepayers’ register); section 9E (registration of persons in business ratepayers’ register); section 9F (maintenance of business ratepayers’ register); section 9G (objections to registration); section 9H (application of Parliamentary Election Rules 1979); and section 9I (false statements etc.). It also repeals section 17 (tenure of office) of the principal Act. The section currently provides that a Member of a Corporation holds office from the date of his election until the declaration of the results of the next ordinary municipal election. Under the repealed section 9(4)(a), the next ordinary municipal

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election would have been a day in the week following the first Sunday in May (in other words, between 6 and 10 May 2019).

Clause 7 inserts sections 17A and 17B in the principal Act. Section 17A provides that the current elected Members' term of office will end on 13 May 2019 (at the end of that day). Section 17B provides that the Minister shall appoint Members in accordance with the provisions of the Fourth Schedule (inserted by clause 11), and their term of office will begin on 14 May 2019 (immediately after the elected Members' term ends).

Clause 8 amends section 18 of the principal Act to delete the references to the election and nomination of candidates, and replace them with references to appointment.

Clause 9 repeals section 18A (determination of proportion of business ratepayers' Councillors to residents' Councillors) of the principal Act, as this is part of the current election process.

Clause 10 amends section 19 (vacancies) of the principal Act to reflect that there will no longer be municipal elections, and to provide that notice of a vacancy will no longer be published by the Secretary or the Mayor (as the case may be) in the Gazette, but will rather be given in writing by the Secretary to the Minister.

Clause 11 inserts the Fourth Schedule, which provides for the appointment of Members and for their tenure of office. For each Corporation, the Mayor and four Councillors will be appointed by the Minister. The other four Councillors will be appointed on the recommendation of a Selection Committee appointed by the Minister. It also provides that the name of every person appointed to the office of Mayor or Councillor of a Corporation, and any vacancy in such office, be published in the Gazette.

Clause 12 revokes the Municipalities (Election) Order 2015.