

Amendments proposed to the 19th Amendment to the Constitution Bill

Amendments to be moved at the Committee Stage to the proposed 19th Amendment to the Constitution Bill

1. Clause 2 : Article 14A “Right of access to Information” :

(a) In paragraph (1) insert the words “as provided for by law” immediately after the words “any information”.

(b) Replace sub-paragraph (d) and last two lines of paragraph (1) with the following:

“(d) any other person being information that is required for the exercise or protection of the citizen’s right of access to information in relation to a person or an institution referred to in sub-paragraph (a), (b) or (c) of this paragraph.”

(c) Replace paragraph (2) with the following:

“(2) No restrictions shall be placed on the right declared and recognized by this Article, other than such restrictions prescribed by law as are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals and of the reputation or the rights of others, privacy, contempt of court, parliamentary privilege, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

The amended Article 14A shall now read as follows:

“Right of access to information.

14A. (1) Every citizen shall have the right of access to any information as provided for by law held by:-

(a) the State, a Ministry or any Government Department or any statutory body established or created by or under any law;

(b) any Ministry of a Province or any Department or statutory body established or created by a statute of a Provincial Council;

(c) any local authority; and

(d) any other person, being information that is required for the exercise or protection of the citizen's right of access to information in relation to a person or an institution referred to in sub-paragraph (a), (b) or (c) of this paragraph.

(2) No restrictions shall be placed on the right declared and recognized by this Article, other than such restrictions prescribed by law as are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals and of the reputation or the rights of others, privacy, contempt of court, parliamentary privilege, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

(3) In this Article, "citizen" includes a body whether incorporated or unincorporated, if not less than three-fourths of the members of such body are citizens.

Note: This change is proposed on the advice of the Attorney General

2. Clause 3 : Article 30(1)

(a) Substitute for the words "the Head of the Executive and of the Government" of the words "the Head of the Executive"

The amended Article 30(1) shall now read as follows:

“The President of the Republic **30. (1) There shall be a President of the Republic of Sri Lanka, who is the Head of the State, the Head of the Executive and the Commander in Chief of the Armed Forces.**

Note: In the draft that was considered by the Cabinet of Ministers Article 30(1) did not specify the President to be the Head of Government. Thereafter, the Cabinet decided that the President should also be the Head of the Government. The draft in Article 42(3) described the Prime Minister as the Head of the Cabinet. However, the consequential amendment to Article 42(3) was not made due to an oversight. This was brought to the notice of the Legal Draftsman and the necessary consequential amendment was to be made at the Committee Stage of the Bill and the Supreme Court was to be informed of this consequential amendment if the bill was challenged. A consequential amendment however will not now be necessary as the above amendment has been accepted.

3. Clause 4 : Articles 31(3A)(c)(iii) and 31(4)

- (a) In Article 31(3A)(c)(iii) substitute for the words “act in the office of President” of the words “act in the office of President during the period between the occurrence of such vacancy and the assumption of office by the new President:”
- (b) In Article 31(3A)(c)(iii) substitute for the words “the Deputy Speaker shall act in the office of President” of the words “a Member of Parliament nominated by the Prime Minister after consulting the Leader of the Opposition, shall act in the office of the President.”
- (c) In Article 31(4)(b) substitute for the words “the Deputy Speaker commences to act in the office of President” of the words “a Member of Parliament nominated by the Prime Minister after consulting the Leader of the Opposition, commences to act in the office of the President.”

(d) In Article 31(4)(c) substitute for the words “the Deputy Speaker shall act in the office of the President” of the words “a Member of Parliament nominated by the Prime Minister after consulting the Leader of the Opposition, shall act in the office of the President.”

The amended Articles 31(3A)(c)(iii) and 31(4) shall now read as follows:

“(iii) If by reason of the death referred to in sub-paragraph (i) there is a vacancy in the office of President, the Speaker shall act in the office of President during the period between occurrence of such vacancy and the assumption of office by the new President:

Provided that if the office of the Speaker be then vacant or the Speaker is unable to act, a Member of Parliament nominated by the Prime Minister after consulting the Leader of the Opposition, shall act in the office of the President.”; and

(4) (b) where the President in office is not a candidate or is not re-elected at a poll for the election of a President, his or her term of office shall be deemed to have expired on the date on which the result of such election is declared. The person elected as President at such election shall assume office forthwith, but not later than two weeks from such date:

Provided that the President in office, notwithstanding anything to the contrary in Article 30, shall continue to exercise, perform and discharge the powers, duties and functions of the office of President, until the assumption of office by the person declared elected as President. If the office of President becomes vacant by reason of the person declared elected as President failing to assume office, the President in office shall continue to exercise, perform and discharge the powers, duties and functions of the office of President, until the Speaker or if the office of Speaker be then vacant, or if the Speaker is unable to act, a Member of Parliament nominated by the Prime Minister after consulting the Leader of the Opposition, commences to act in the office of President;

(c) if by reason of the death referred to in paragraph (a) there is a vacancy in the office of President the Speaker shall act in the office of President during the period between the occurrence of such vacancy and the assumption of office by the new President:

Provided that if the office of the Speaker be then vacant or the Speaker is unable to act, a Member of Parliament nominated by the Prime Minister after consulting the Leader of the Opposition, shall act in the office of the President;”

4. Clause 6 : Article 33A to be replaced with the following:

“President
to act on
the advice
of the Prime
Minister.

33A.(1) The President shall be responsible to Parliament for the due exercise, performance and discharge of his or her powers, duties and functions under the Constitution and any written law, including the law for the time being relating to public security.

(2) The President shall, except in the case of the appointment of the Prime Minister or as otherwise required by the Constitution, act on the advice of the Prime Minister.

(3) The President may require the Prime Minister to reconsider such advice. Where, upon reconsideration, the advice originally given remains unchanged the Prime Minister shall inform Parliament of the same and seek the views of Parliament on the matter. The President shall thereafter act in accordance with the views expressed by Parliament, or where Parliament does not express any views, the President shall act in accordance with the advice of the Prime Minister.

(4) Notwithstanding anything to the contrary in the first proviso to paragraph (1) of Article 35, no institution administering justice and no other institution, person or authority shall have the power

or jurisdiction to inquire into, pronounce upon, or in any manner call in question, any act or omission of the President on the ground that he or she has not acted in accordance with the provisions of paragraph (2) or paragraph (3).”.

5. Clause 8 : Article 37

To be replaced by the following:

“Acting
President.

37.(1) Where:-

(a) the President is of the opinion that, due to absence from Sri Lanka or any other cause he is unable; or

(b) the Chief Justice in consultation with the Speaker is of the opinion that due to illness the President is unable,

to exercise powers, duties and functions of the office of President, the President or the Chief Justice, as the case may be, shall communicate in writing his or her opinion to the Speaker, and thereupon the Speaker shall act in the office of the President during such period. If the office of the Speaker be then vacant or the Speaker is unable to act, a Member of Parliament nominated by the Prime Minister after consulting the Leader of the Opposition, shall act in the office of the President.

(2) The provisions of the Constitution (other than the provisions of paragraph (2) of Article 32) shall apply, insofar as they can be applied, to a person acting in the office of President.

(3) In this Article and in Articles 38(1)(b) and 40(1), “the Speaker” includes, during any period when Parliament is dissolved, the person who held the office of Speaker immediately before the dissolution of Parliament.

Note: This change is proposed on the advice of the Attorney General

6. Clause 9 : Articles 39(1)(a), 39(2) and 40(1)(c)

(a) In Article 39(1)(a) substitute for the words “an election shall be held to fill such vacancy in accordance with Article 40, not later than one month” of the words “a poll shall be held for the election of the President not later than three months”

(b) In Article 39(2) substitute for the words “the Deputy Speaker shall act in the office of President” of the words “**a Member of Parliament nominated by the Prime Minister after consulting the Leader of the Opposition, shall act in the office of President.**”

(c) In Article 40(1)(c) substitute for the words “the Deputy Speaker shall act in the office of President” of the words “**a Member of Parliament nominated by the Prime Minister after consulting the Leader of the Opposition, shall act in the office of President.**”

The amended Article 39(1)(a) shall now read as follows:

“Determination by the Supreme Court that President is not duly elected.

39. (1) Where the Supreme Court in the exercise of its jurisdiction under Article 130 determines that:-

(a) the election of the President is void and does not determine that any other person was duly elected, then a vacancy shall be deemed to have occurred in the office of President and

a poll shall be held for the election of the President not later than three months from the date of such determination; or

The amended Article 39(2) shall now read as follows:

(2) Upon the Supreme Court making any such determination as is referred to in sub-paragraph (a) of paragraph (1), the person who was exercising, performing and discharging the powers, duties and functions of the office of President shall forthwith cease to exercise, perform and discharge such powers, duties and functions. During the period intervening between the date of such determination and the assumption of office by the new President, the Speaker shall act in the office of President:

Provided that if the office of the Speaker be then vacant or the Speaker is unable to act, a Member of Parliament nominated by the Prime Minister after consulting the Leader of the Opposition, shall act in the office of President.

The amended Article 40(1)(c) shall now read as follows:

(c) During the period between the occurrence of such vacancy and the assumption of office by the new President the Speaker shall act in the office of President:

Provided that if the office of the Speaker be then vacant or the Speaker is unable to act, a Member of Parliament nominated by the Prime Minister after consulting the Leader of the Opposition, shall act in the office of President.

7. Clause 10 : Article 41B to be amended as follows:

In paragraph (4) by replacing sub-paragraphs (a) and (b) as follows:

(a) the persons recommended under paragraph (3) to be appointed as members of a Commission, shall be deemed to have been appointed as the members of that Commission; and

(b) the person whose name appears first in the list of names recommended under paragraph (3) to be appointed as the Chairman of a Commission, shall be deemed to have been appointed as the Chairman of that Commission,

with effect from the date of expiry of such period.

8. Clause 11 : Article 42 to be amended by the addition of a new paragraph to read as follows:-

“(5) Notwithstanding anything contained in the preceding provisions of this Article, the President may summon meetings of the Cabinet of Ministers for the purpose of discussing any matter of national importance, and shall preside at such meetings.”

Note: This addition has been included to give effect to an observation made by the Attorney General.

9. Clause 23 : Article 92 is further amended by omitting the repeal of paragraph (d) of that Article.

The amended Article 92 shall now read as follows:

“Disqualification for election as President.

92. Every person who is qualified to be an elector shall be qualified to be elected to the office of President unless he is subject to any of the following disqualifications –

- (a) if he has not attained the age of thirty five year ;**
- (b) if he is not qualified to be elected as a Member of Parliament under sub-paragraph (d), (e), (f) or (g) of paragraph (1) of Article 91 ; and**
- (c) if he has been twice elected to the office of President by the People ;**
- (d) if he has been removed from the office of President under the provisions of sub-paragraph (e) of paragraph (2) of Article 38.**

Note: This is consequent to the decision to retain the impeachment provisions relating to the President.

10. Clause 26 : Article 104B is further amended as follows:

(a) In paragraph (5)(b) by the substitution for the words “private broadcasting or telecasting operator,” of the words “private broadcasting or telecasting operator or any proprietor or publisher of a newspaper, as the case maybe,”

(b) Replace paragraph (6) with the following:

(6) The provisions of paragraph (5) shall not be applicable to private broadcasting or telecasting operator, proprietor or publisher of a privately owned newspaper who informs the Commission within seven days from the date of nomination of candidates at an election or from the date of the Proclamation requiring a Referendum to be held, that it is the policy of the broadcasting or telecasting station or newspaper, which such operator, proprietor or publisher represents, or to support any particular candidate or any particular named political party or independent group at that election, or to support or to oppose a proposal put to the People at that Referendum, as the case may be.”

11. Clause 36 of the Bill to be deleted.

Note: This is consequent to the decision to retain the impeachment provisions relating to the President.

12. Clause 54 (1)(c) of the Bill is hereby amended by the insertion immediately after (x) of the following:

“(xi) a Judge of the High Court;

(xii) a judicial officer, a scheduled public officer, public officer or a police officer,”

Note: This addition has been included to give effect to an observation made by the Attorney General

13. Clause 54(2) of the Bill is to be amended by the substitution for the words “from the date on which this Act becomes law” of the words

“from the date on which this Act becomes law:

Provided that a person holding office on the day preceding the date on which this Act becomes law as a Chairman or a member of any such Commission referred to above may continue to exercise and discharge powers and functions of their respective Offices until such date as those respective Commissions are constituted in accordance with Chapter VIIA of the Constitution. ”

Note: This addition has been included to give effect to an observation made by the Attorney General

14. Clause 55 of the Bill is hereby amended by the insertion immediately after sub-paragraph (b) of the following:

“ (c) The Cabinet of Ministers functioning immediately prior to the dissolution of the Seventh Parliament shall, notwithstanding such dissolution, continue to function and shall cease to function upon the conclusion of the General Election and accordingly, the Prime Minister, Ministers of the Cabinet of Ministers, other Ministers and Deputy Ministers shall continue to function unless they cease to hold office as provided in sub-paragraphs (a) or (b) of paragraph (2) of Article 46.”

15. Clause 56 : to be replaced with the following:

“President in office to be in charge of certain subjects and functions.

56. Notwithstanding anything to the contrary in the Constitution, during the period commencing on the date on which this Act becomes law and so long as the person holding office as the President on the day preceding the date on which this act becomes law, holds the office of the President, the following provisions shall apply:-

- (a) the President may assign to himself the subjects and functions of Defence, Mahaweli Development and Environment and determine the Ministries to be in his charge for that purpose and accordingly, any reference in**

any written law to the Minister to whom such subject or function is assigned, shall be read and construed as a reference to the President;

- (b) the President may attend meetings of the Cabinet of Ministers, and shall preside at every such meeting; and
- (c) the President shall act in accordance with the decisions of the Cabinet of Ministers or as otherwise required by the Constitution.