

Justice of the Peace Manual

2012

PARLIAMENTARY
REGISTRY 

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INTRODUCTION

This Manual is intended as a guide to the functions, duties and powers of Justices of the Peace in Bermuda.

A Justice of the Peace is appointed under the Magistrates Act 1948 section 8(1) which provides—

“ Appointment of Justices of the Peace

- 8 1) The Governor may, acting in his discretion, by notice published in the Gazette, from time to time, appoint fit and proper persons to be justices of the peace in and for Bermuda.
- (2) A person appointed to be a justice of the peace under this section shall hold office as such during the Governor's pleasure.
- (3) A justice of the peace appointed under this section **shall have all the privileges and immunities and all the powers and duties specified in any statutory provision enacted before, on or after the coming into force of this section, or in any other provision of law for the time being having effect in Bermuda.** (Emphasis added)

Section 3 (2) of that Act provides that “A magistrate by virtue of his office shall be a Justice of the Peace.”

Justices of the Peace originally derived authority from common law and English statute in force in 1612. This authority was incorporated into Bermuda's law by section 15 of the Supreme Court Act 1905. Since then, the office of Justice of the Peace has also derived authority from local statute.

Before the passing of the Police and Criminal Evidence Act 2006 (“PACE Act”) there were over 60 Bermuda statutes which provided Justices of the Peace with express duties and powers including the power to issue warrants. The number of statutes relating to a Justice of the Peace duties decreased after the provisions of Code B of the PACE Act came into effect. Code B is a Code of Practice issued by the Minister of Justice in accordance with sections 73 and 74 of the PACE Act. The Code has effect in relation to applications for warrants made, and searches and seizures taking place, after midnight on 6 September 2009. Since that date a Justice of the Peace no longer has the power to issue search warrants for the entry and search of any premises. As stated in paragraph 1.8 of Code B, **“References in statutory provisions to powers of a Justice of the Peace to issue a warrant shall be taken as a reference to a Magistrate”**. (See PACE Act Section 14A).

The most significant duties of Justices of the Peace are contained in the Acts which govern the election process namely, the Parliamentary Election Act 1978, the Municipalities Act 1923, and the Referendum Act 2012.

A detailed account of those statutory provisions together with a brief account of other relevant legislation is set out in this Manual.

The Acts of Parliament referred to in this Manual *should always be* consulted when performing any function or duty as a Justice of the Peace as there are penalties when a Justice of the Peace goes outside of his powers. Careful reference to the relevant legislation and all amendments thereto is always advised and they can be viewed online at www.bermudalaws.bm

This manual is divided into Parts in order to conveniently set out the different powers and duties of a Justice of the Peace -

- **Part A** deals with the powers of Justices of the Peace in relation to the Parliamentary Election Process;
- **Part B** deals with Election Forms and Fees;
- **Part C** deals with the powers of Justices of the Peace in relation to Municipal Elections;
- **Part D** deals with the process for a Referendum;
- **Part E** deals with the Official Stamp of a Justice of the Peace and usage; and
- **Part F** deals with other statutory powers of a Justice of the Peace.

PART A

THE ELECTION **PROCESS**

**PROVISIONS
RELEVANT TO THE
FUNCTIONS, DUTIES AND
POWERS OF JUSTICES OF THE
PEACE AS
RETURNING OFFICERS AND
ELECTION OFFICERS FOR A
PARLIAMENTARY ELECTION**

The Parliamentary Election process is begun when a writ of election is issued by the Governor. The relevant provisions of the Parliamentary Election Act 1978 are set out as follows-

PART IV

CALLING ELECTIONS

Section 27 - Issue of Writs of Election

This section makes provision for a writ of election to be issued by the Governor. The writ is addressed to one or more Justices of the Peace for execution.

Issue of writs of election

27 (1) Every parliamentary election in a constituency shall commence with the issue by the Governor of a writ of election under the Public Seal of Bermuda.

(2) A writ of election shall be addressed to one or more Justices of the Peace, who subject to section 29 shall be charged with the duty of holding the parliamentary election in accordance with the terms of the writ and Parts V, VI, VII and VIII:

Provided that two or more concurrent writs of election shall not be addressed to the same Justice of the Peace.

(3) Subject to this section, every writ of election shall appoint the nomination day, the polling day and the election room for the parliamentary election.

(4) The nomination day appointed for a parliamentary election shall not be an excepted day and shall, subject to section 27A, be a day at least fourteen days before the polling day.

(5) The polling day appointed for a parliamentary election shall not be an excepted day and shall, subject to section 27A,—

(a) in the case of a general election be the day appointed for the holding of the general election by proclamation pursuant to section 51(1) of the Constitution [*title 2 item 1*];

(b) in the case of a bye-election be a day not earlier than twenty-eight days after the issue of the writ nor later than two months after the occurrence of the vacancy which occasioned the issue of the writ.

(6) The place appointed for a parliamentary election shall be some convenient building or part of a building within, or, in the opinion of the Registrar, conveniently near the boundary of, the constituency concerned, not being a building licensed for the sale of intoxicating liquor.

(7) The several writs of election issued in the case of a general election shall bear the same date, shall be issued on the same day and shall appoint the same nomination day and the same polling day respectively for each constituency.

[Section 27 amended by 1997:22 effective 11 July 1997]

Power to postpone elections

27A (1) Where at any time between the issue of a writ of election and the polling day appointed by that writ the Governor is satisfied that it is expedient so to do by reason of—

- (a) Bermuda having become, or being likely to become, engaged in any war; or
- (b) a state of emergency having been proclaimed under section 14(3) of the Constitution; or

- (c) the occurrence of an earthquake, hurricane, flood or fire, or the outbreak of a pestilence or an infectious disease or other calamity whether similar to the foregoing or not; or
- (d) the likelihood that the voters' list will not be available before the polling day; or
- (e) the occurrence of rioting, open violence or other civil disturbance which has caused, or is likely to cause, such interruption or abandonment of the electoral process as to prejudice the holding of a fair election,

he may by proclamation published in the Gazette cancel the polling day appointed by the writ and appoint another day, not being more than thirty days after that day (but subject in any event to the limits set forth in section 51(1) and (2) of the Constitution), to be the polling day instead.

(2) A proclamation under this section made by virtue of paragraph (c), (d) or (e) of subsection (1) may be expressed to apply to all the constituencies of Bermuda, or to one or more of those constituencies specified in the proclamation; and, where such a proclamation is expressed to apply to a particular constituency or to particular constituencies, the proclamation shall not affect any appointment of a polling day, or the operation of this Act as respects any such appointment, in relation to any other constituency.

(3) The writ of election relating to a constituency to which a proclamation made under this section applies shall be deemed to have been amended by substituting the polling day appointed by the proclamation for the polling day appointed by that writ.

(4) Where a proclamation under this section is made before the day appointed by the writ of election in question as the nomination day, the nomination day shall be deemed postponed until the fourteenth day next preceding the polling day appointed by the proclamation.

(5) Where a proclamation under this section is made after the day appointed by the writ of election in question as the nomination day, the postponement by the proclamation of the polling day shall not affect any nomination that was made on nomination day, and no further nomination may be made.

(6) Where the polling day or the nomination day appointed by a writ of election ("the original day") is postponed by virtue of this section to another day ("the substitute day"), any reference in this Act or in any Rules made under this Act to the original day shall, if the context so requires, be construed as a reference to the substitute day and not the original day.

(7) Where the polling day appointed by a writ of election is postponed by a proclamation by virtue of this section, the Governor may by that proclamation or by a later proclamation published in the Gazette if, in his opinion, the election room appointed by the writ ("the original election room") will not be available for the purposes of the election, appoint another election room (a "substitute election room") for those purposes instead; and, where a substitute election room has been so appointed, any reference in this Act or in any Rules made under this Act to the original election room shall, if the context so requires, be construed as a reference to the substitute election room and not the original election room.

[Section 27A inserted by 1997:22 effective 11 July 1997]

Section 28 -Endorsement Over of Writ in Certain Circumstances

This section provides that if a Justice of the Peace to whom a writ of election is addressed dies, becomes ill, intends to be absent from Bermuda, or is a candidate at the parliamentary election, a report of such circumstances must be made in writing and returned, with the writ, to the Parliamentary Registrar ("the Registrar").

The Registrar may then endorse the writ over to another Justice of the Peace and it has effect as though it had been initially addressed to that other Justice of the Peace.

Endorsement over of writ in certain circumstances

28 (1) If any Justice of the Peace to whom a writ of election has been addressed intends to be a candidate at the parliamentary election to which the writ or any other concurrent writ relates, or is or becomes prevented by illness or infirmity or by reason of intended absence from Bermuda or other good cause from executing the writ, he shall, unless the writ is addressed also to some other Justice of the Peace who is capable of executing the same, forthwith report the circumstances to the Registrar in writing and return the writ to the Registrar.

(2) Whenever a writ is returned to the Registrar in the circumstances specified in subsection (1), or in the event of the death of a Justice of the Peace to whom a writ of election has been addressed, the Registrar may endorse the writ over to another Justice of the Peace and deliver it to him and thereupon section 27(2) shall apply as if the writ had been initially addressed to that other Justice of the Peace.

Section 29 Duties of Returning Officers

This section provides that reference to a "Returning Officer" means a Justice or Justices of the Peace charged with executing a writ of election. It also provides that where two or more Justices are charged with the duty of executing a writ of election, the Justices should, as far as possible, act jointly in the discharge of that duty. If one or more Justices exercise the powers conferred upon Justices by the Act, their actions are as valid and effective as if all the Justices had exercised the powers.

A Returning Officer, after receipt of the Registrar's approval, may appoint one or more persons as presiding officers to assist him in the discharge of his duties. It is the duty of each Returning Officer to comply with any directions given by the Parliamentary Registrar.

Duties of Returning Officers

29 (1) In this and every succeeding part of this Act "Returning Officer" means the Justice or Justices of the Peace charged with the duty of executing a writ of election.

(2) Where two or more Justices of the Peace are charged with the duty of executing a writ of election, then so far as is reasonably practicable and subject to this Act they shall act jointly in the discharge of that duty, but the exercise of the powers conferred upon Returning Officers by this Act by any one or more of the Justices so charged shall be as valid and effectual as the exercise of those powers by all of them and no proceedings relating to a parliamentary election shall be liable to be impugned on the ground that anything required or authorized to be done by, to or before the Returning Officer was done by, to or before one or more but not all of the Justices.

(3) The Returning Officer after consultation with the Registrar may appoint one or more persons approved by the Registrar as presiding officers to assist him in the discharge of his duties and in particular may appoint any one of them to preside at the election room during any temporary absence of the Returning Officer therefrom and any presiding officer so appointed shall on behalf of the Returning Officer exercise such powers and perform such duties as he may be authorized to exercise and perform by the Returning Officer.

(4) The Registrar may, subject to this Act, give Returning Officers generally or any particular Returning Officer such directions as he may think necessary and appropriate for ensuring the efficient and orderly conduct of any parliamentary election and it shall be the duty of each Returning Officer to conform to any directions so given.

Section 31- Delivery of Parliamentary Register etc. to Returning Officer

This section charges the Registrar with the duty of delivering a certified copy of the parliamentary register for that constituency to a Returning Officer before eleven o'clock in the morning of nomination day in any parliamentary election.

The Returning Officer must retain the parliamentary register in his custody until the conclusion of the parliamentary election, after which, he must return it to the Registrar.

Delivery of parliamentary registers etc. to Returning Officer

31 (1) Before eleven o'clock in the forenoon of nomination day in any parliamentary election, the Registrar shall deliver to the Returning Officer the parliamentary register for that constituency certified under the Registrar's hand to be correct .

(2) The Returning Officer shall retain the parliamentary register in his custody until the conclusion of the parliamentary election and shall then deliver it back to the Registrar.

[Section 31 amended by 1999:15 effective 11 May 1999]

PART V

NOMINATION PROCEDURE

Section 32 - Nomination Procedure

This is a very important section of the Act as it addresses the nomination procedure and outlines the criteria under which a Returning Officer must accept the nomination of a candidate.

Section 32 was amended by the Parliamentary Election Amendment Act 2012 to allow the Parliamentary Registrar to appoint a nomination place by notice published in the Gazette. This amendment allows the Registrar to appoint one nomination place instead of having an election room in each constituency open as a nomination place.

A Returning Officer must be at the nomination place between 11:00 a.m. and 1:00 p.m. to accept the nominations of persons as candidates. The Returning Officer must adhere to the following criteria in accepting nominations—

- (a) the nomination must be written on a nomination paper as provided for in the Act;
- (b) two people who are named on the parliamentary register in the constituency concerned must sign the nomination paper in duplicate, one as proposer, and the other as seconder; neither of whom must have proposed or seconded another candidate in the election. It shall not be necessary for a nomination paper to be subscribed in the presence of the Returning Officer;

- (c) the candidate's full name must be on the nomination paper;
- (d) the nomination paper must be delivered in duplicate to the Returning Officer at the nomination place between 11:00 a.m. and 1:00 p.m.;
- (e) the intended candidate must not be nominated as a candidate for any other constituency. In the case of a bye-election, the candidate cannot already be a member of the House of Assembly or a member of the Senate;
- (f) the intended candidate or someone on his behalf must have deposited \$250 into the Consolidated Fund. An official receipt from the Accountant General's Office must be forwarded to the Returning Officer as proof of payment, and
- (g) the nomination paper must be signed by the candidate to symbolize acceptance of his candidacy in that constituency and no other.

Please Note**

If a candidate is endorsed by a political party and wishes this to be indicated in the election documents, the chairman of the political party with which the candidate is affiliated must submit a letter to the Returning Officer to this effect. The candidate in this case is referred to as a 'party candidate'. If a political party does not endorse a candidate, he must be described as an 'independent'.

Prior to polling day, the Returning Officer needs to receive, in writing, the names of the persons who will represent the candidate or, where he is a party candidate, of the party that endorses him. In either case, the persons are known as 'Election Agents'.

Nomination of candidates

32 (1) The Returning Officer shall attend at eleven o'clock in the forenoon on the nomination day appointed by the writ of election at such place as the Registrar shall, by notice published in the Gazette, appoint and shall there until one o'clock in the afternoon, but no later, accept nominations of candidates in accordance with subsection (2).

(2) The Returning Officer shall accept the nomination of a person as a candidate if, and shall not accept such nomination unless —

- (a) the nomination of that person is written on a separate paper (hereinafter referred to as a nomination paper) in the prescribed form or is, in the opinion of the Returning Officer, substantially in that form;
- (b) the nomination paper is signed in duplicate by two parliamentary electors whose names are included in the parliamentary register for the constituency concerned, one as proposer and one as seconder, neither of whom has proposed or seconded the nomination of another candidate at that parliamentary election;
- (c) the intended candidate is described in the nomination paper by his full name;
- (d) the nomination paper is delivered in duplicate to the Returning Officer either by the intended candidate or by his proposer or seconder at the place and between the hours specified in subsection (1);
- (e) in the case of concurrent parliamentary elections in more than one constituency, the intended candidate is nominated as a candidate in no other constituency and in the case of a bye-election is not already a member of the House of Assembly or a member of the Senate;

(f) the intended candidate or someone on his behalf has deposited in the Consolidated Fund the sum of two hundred and fifty dollars and in proof thereof delivers or causes to be delivered to the Returning Officer an official receipt therefor signed by the Accountant General or an authorized officer of his Department, showing that such sum has been deposited for the purposes of that person's candidature at that parliamentary election; and

(g) the nomination paper is signed by the intended candidate to denote his acceptance of candidature in that constituency and no other.

(3) Where a candidate is endorsed by a political party and wishes to have the name of that party shown in the election documents relating to him, there shall be delivered to the Returning Officer along with his nomination paper a letter from or on behalf of the chairman of the party stating that the candidate is endorsed by the party, and a candidate in respect of whom the provisions of this subsection are satisfied is in this Act referred to as a "party candidate".

(4) A candidate in respect of whom the provisions of subsection (3) are not satisfied (in this Act referred to as an "independent candidate") shall be described in the election documents relating to him by the word "independent".

(5) It shall not be necessary for a nomination paper to be subscribed in the presence of the Returning Officer.

(6) At the time an intended candidate's nomination paper is lodged with the Returning Officer or at some time before the polling day, the Returning Officer shall be informed in writing of the names of the persons (hereinafter referred to as "election agents" or "agents") who will represent him, or where he is a party candidate, the party endorsing him, in the election room in accordance with paragraph (2) of rule 4 of the Rules contained in the Schedule.

(7) The Registrar shall make arrangements to supply nomination papers in the prescribed form free of charge to parliamentary electors at his office during the period commencing with the first day on which a notice of a parliamentary election is published pursuant to section 30 and ending with the nomination day and shall furnish the Returning Officers with stocks of such forms for use at the place appointed for accepting nominations during the nomination period; but any failure to make such arrangements shall not affect the validity of any parliamentary election and the use of the prescribed forms shall not be obligatory, so however that each nomination paper actually used is substantially in the form prescribed.

[Section 32 amended by 2012Amendment Act effective 4 May 2012]

Section 33 - Uncontested Elections

A Returning Officer, after the close of the nomination period, must declare a person elected if only one person was nominated as a candidate. The Returning Officer must submit the name to the office of the Deputy Governor with a signed and completed writ of election.

Uncontested election

33 Where at the close of the period for the acceptance of nomination of candidates at a parliamentary election in a constituency only one person is duly nominated as a candidate for the vacancy to be filled at that election, the Returning Officer shall forthwith declare such duly nominated person to be elected and shall return his name to the office of the Deputy Governor with the writ of election duly completed and signed by him.

[Section 33 repealed and replaced by 2003:11 effective 9 June 2003]

PART VI

CONTESTED ELECTIONS

Sections 35-37 - Contested Elections

When the writ of election is addressed to two or more Returning Officers, the Registrar must direct each of the Officers as to his responsibilities in respect of the taking of a poll.

Special interpretation of Parts VI and VII

35 (1) Subject to subsection (2), any reference in this Part or Part VII to a parliamentary elector or to the parliamentary register shall be construed as the case may be as a reference to a parliamentary elector or to the parliamentary register for the constituency in respect of which the parliamentary election is being held.

(2) Where the writ of election is addressed to two or more Justices of the Peace, each of those Justices may if so directed by the Registrar assume particular responsibility for the taking of the poll in relation to a particular part of the parliamentary register including the supervision and control of a separate ballot box in relation to that part and in that event all references in this Part and in the Rules contained in the Schedule to the Returning Officer, a parliamentary elector, a ballot box, the parliamentary register or ballot paper or a polling place within the election room shall be construed as references to the particular Justice of the Peace and to those matters within his responsibility for the taking of the poll in relation to that particular part only of the parliamentary register, unless the context otherwise requires.

Section 36 - Taking a poll in a contested election

The taking of a poll is required when more than one person is nominated for the vacancy in a particular constituency.

Taking a poll in contested election

36 (1) Subject to section 38, where at the close of the period for the acceptance of nominations of candidates at a parliamentary election in a constituency, more than one person has been duly nominated as candidates in respect of the vacancy to be filled at that election, then a poll shall be taken at the election room on the polling day therefor.

- (2) In the taking of a poll at a parliamentary election the voting shall be by ballot and —
- (a) every parliamentary elector desiring to vote at the election shall have facilities for voting in secrecy, freely and without interference; and
 - (b) every parliamentary elector who votes at the election shall do so in secrecy, freely and without interference.

(3) Every parliamentary elector whose name appears in the parliamentary register for a constituency in respect of which a contested parliamentary election is held shall, if he is in employment, be entitled to receive from his employer without penalty sufficient time off work on the polling day to enable him to travel to the election room and there record his vote.

[Section 36 amended by 2003:11 effective 9 June 2003]

Section 37 - Withdrawal of a candidate

If a person is accepted as a nominated candidate for a parliamentary election, the person may only withdraw from the election when the Returning Officer has

received a written notice of withdrawal, signed by the person not less than two clear days before the polling day.

On receipt of a notice of withdrawal the Returning Officer must publish a notice in the constituency concerned and make arrangements for the preparation of new ballot papers, or the amendment of existing ones, so that the poll may occur on polling day.

If the withdrawal renders a poll unnecessary the Returning Officer must as soon as practicable, declare as elected the candidate who has not withdrawn and must submit the name to the office of the Deputy Governor with a signed and completed writ of election.

Withdrawal of candidate

37 (1) No person whose nomination as a candidate for a parliamentary election has been duly accepted by the Returning Officer may withdraw from the election except by means of a written notice signed by him and delivered to the Returning Officer not less than two clear days, excluding any excepted days, before the polling day for such election, unless the effect of his withdrawal is to render the taking of a poll in such election unnecessary in which event such person may so withdraw by delivering such notice to the Returning Officer at any time before the polling day.

(2) On receipt of a notice of withdrawal in accordance with subsection (1) the Returning Officer shall forthwith publish the notice of withdrawal in the constituency concerned and shall, subject to subsection (3), make arrangements for the preparation of new ballot papers or, if the circumstances do not so allow, for the amendment of existing ballot papers, so that the poll may take place on the polling day.

(3) Where a withdrawal from election pursuant to subsection (1) renders the taking of a poll in the parliamentary election unnecessary, the Returning Officer shall as soon as may be on the polling day declare the candidate for election in the constituency who has not withdrawn to be elected and shall return his name to the office of the Deputy Governor with the writ of election duly completed and signed by him.

[Section 37 amended by 2003:11 effective 9 June 2003]

Section 38 - Death of a candidate

If a poll is required to be taken, and before the close of the poll the person nominated as a candidate dies, the parliamentary election in that particular constituency must be declared void by the Returning Officer. A bye-election must occur within the next succeeding period of two months to fill the vacancy which existed at the time of the issue of the writ of election. The Returning Officer must also report to the Deputy Governor and to the Registrar the circumstances giving rise to a bye-election.

Death of candidate

38 (1) Where under section 36 a poll is required to be taken in a parliamentary election in a constituency and before the close of the poll in that election a person duly nominated as a candidate in that election dies, then the parliamentary election in that constituency shall be void and shall be so declared by the Returning Officer and a bye-election shall ensue within the next succeeding period of two months to fill the vacancy existing at that time of the issue of the relevant writ of election.

(2) The Returning Officer shall forthwith report to the Deputy Governor and the Registrar the circumstances giving rise to a bye-election under subsection (1).

[Section 38 amended by 2003:11 effective 9 June 2003]

Section 39 - Duration of Poll

The poll in a parliamentary election is taken between the hours of 8:00 a.m. and 8:00 p.m. If there are any qualified voters in the election room, or in line at the door, who are qualified to vote, but have not had the opportunity to vote, the poll must be kept open for a sufficient period to enable them to vote before the outer door of the election room is closed. No voter who is not actually present at the election room at the hour of closing (being 8:00 p.m.) can be allowed to vote, even if the poll is still open when he arrives.

Duration of poll

39 (1) Subject to sections 40 to 42, the poll in a parliamentary election shall be taken on the polling day between the hours of eight o'clock in the forenoon and eight o'clock in the afternoon.

(2) If at the hour of closing of the poll there are any electors in the election room, or in line at the door, who are qualified to vote and have not been able to do so since their arrival at the election room, the poll shall be kept open a sufficient time to enable them to vote before the outer door of the election room is closed, but no person who is not actually present at the election room at the hour of closing shall be allowed to vote, even if the poll is still open when he arrives.

[Section 39 amended by 1999:15 effective 11 May 1999]

Section 42 – Advanced Polls

This section outlines the conduct for the purpose of taking an advanced poll.

Conduct of advanced polls

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

(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 parliamentary election concerned to the Returning Officer for the constituency to which the packet relates.

(3) The Returning Officer shall open every packet of ballot papers delivered to him pursuant to subsection (2) immediately before the commencement of the poll in the presence of any persons who are lawfully in the election room at that time and shall place the ballot papers without examining them in the ballot box at his poll before he locks it up and places his seal upon it as provided in the Schedule.

(4) For the avoidance of doubt it is hereby declared that the other provisions of this Act applying to parliamentary electors, to voting procedure and to parliamentary elections shall apply so far as is convenient to the taking of an advanced poll under this section, section 40 and section 41 as they apply to the taking of a poll at an election room.

Section 43 - General Duties

This section outlines the general duties of a Returning Officer for the purpose of taking a poll.

The Returning Officer must be present in the election room for the duration of the taking of the poll and the counting of the votes. He has control over the proceedings and has a duty to maintain order in and about the election room,

He has the authority to remove, or authorize someone else to remove, any person who disobeys his lawful orders, but he must exercise his authority in such a way that he does not deprive a voter of his opportunity to vote.

General duties of Returning Officer as to taking of poll

43 (1) The Returning Officer or a presiding officer appointed under section 29(3) shall be present at the election room throughout the taking of the poll and the counting of votes and shall conduct and have charge of the proceedings and it shall be his duty to keep good order in and about the election room during the proceedings.

(2) If any person during a parliamentary election misconducts himself in or about the election room or fails to obey the lawful order of the Returning Officer, he may immediately by order of the Returning Officer be removed from the election room or the vicinity thereof by any police officer or other person authorized by the Returning Officer to remove him:

Provided that the powers conferred by this subsection shall not be exercised so as to deprive any parliamentary elector who is entitled to vote at a parliamentary election of his opportunity so to vote.

Section 44 - Adjournment of Poll in Certain Circumstances

Under this section if a Returning Officer believes that the proceedings at an election room on polling day in a parliamentary election are interrupted or obstructed by disorder beyond his control, he may adjourn the proceedings until the next morning at eight o'clock, and inform the Registrar of his decision. He must remove ballot boxes to ensure that they are not interfered with and take appropriate steps to inform the public of the adjournment.

Adjournment of poll in special circumstances

44 (1) Where the proceedings at an election room on polling day in a parliamentary election are interrupted or obstructed by general disorder or by any other circumstances beyond the control of the Returning Officer which, in his opinion, makes it impracticable to continue the taking of the poll, he may adjourn the proceedings until the hour of eight o'clock in the forenoon of the following day not being an excepted day and in that event he shall inform the Registrar forthwith of his decision, shall seal up the ballot boxes effectively and ensure that they are so stored as to be free from interference and shall take every practicable step to bring the adjournment to the attention of the public in the constituency.

(2) Where the poll is adjourned pursuant to subsection (1) the hours of polling on the day to which it is adjourned shall be the same as for the original day and the other provisions of this Act shall apply *mutatis mutandis* to the taking of such adjourned poll.

[Section 44 amended by 2012Amendment Act effective 4 May 2012]

Section 45 - Rules for Taking a Poll and Schedules

This section provides the rules for taking a poll and refers to the Schedule set out below.

Rules for taking a poll

45 The Rules contained in the Schedule shall have effect with respect to the taking of the poll at a parliamentary election:

Provided that no parliamentary election shall be declared void by reason of a failure to comply with any such rule if it appears that the poll was conducted substantially in accordance with section 36(2) and that the failure to comply did not affect the result of the election.

SCHEDULE

Rules for the Taking of a Poll

The Returning Officer has the responsibility of displaying a public notice of the poll near the main door of the election room.

This notice must include—

- (a) the name of the candidates nominated for the constituency;
- (b) the names of the parties to which they belong;
- (c) the names of their proposers and seconders;
- (d) the date of the polling day; and
- (e) the hours during which the polls will be open.

1 When a poll is required to be taken at any parliamentary election, a public notice of the poll shall be given by the Returning Officer as soon as the period for acceptance of the nominations is closed. The names of all candidates nominated for the constituency together with the name of the parties to which they belong or the word "independent" if they are so described in the election document and the names of their respective proposers and seconders shall appear in the notice together with the date of polling day and the hours when the poll will be open. The notice shall be displayed conspicuously on or near the main door of the election room.

The Returning Officer or the Registrar must ensure that on polling day, the election room is sufficiently and appropriately equipped to facilitate the taking of a poll.

2 (1) The Registrar or the Returning Officer shall ensure that on polling day the election room is sufficiently furnished and equipped to facilitate the proper and orderly taking of the poll and shall in particular ensure that—

TABLES

In the election room there must be one table per 450 voters, for the purpose of administering ballot papers to voters, and observing and checking the credentials of voters.

- (a) one table (in these Rules referred to as an "electoral table") is provided in the election room in respect of every 450 electors (more or less) for use by officers in, and by election agents in observing, the checking of the credentials of, and the handing out of ballot papers to, electors;

POLLING PLACE

The polling place must be set aside in the election room and separated from the remaining parts of the room by a barrier.

- (b) a polling place is set aside in the election room and separated by a barrier from the remaining parts of the room;

COMPARTMENTS

The polling place must be divided into compartments of sufficient size and appropriately furnished to accommodate the privacy of the voting process. The number of compartments provided must be proportional to the number of voters registered in a constituency.

- (c) the polling place is divided into compartments of sufficient size and so furnished that an elector can record his vote therein screened from observation and that a sufficient number of such compartments are provided having regard to the number of electors registered in the constituency;

HANDICAPPED VOTERS

One of the compartments provided must be of sufficient dimensions to accommodate at least three people at a time for the convenience of handicapped voters.

- (d) one of the compartments in the polling place is of sufficient size to accommodate at least three persons at a time for the convenience of handicapped electors;

WRITING EQUIPMENT

Each compartment must be equipped with sufficient ballot papers and a pen or pencil.

- (e) each compartment is furnished with an indelible pencil or pen attached thereto;
(f) sufficient ballot papers are available printed on paper capable of being easily folded up but of sufficient thickness to prevent the marking on one side from being read through the paper from the other;

BALLOT BOXES

A ballot box of convenient size, furnished with a secure lock and key must be provided. The design the box must be constructed so that ballot papers may be inserted into it, but cannot be withdrawn without the box being unlocked.

- (g) a ballot box is provided of convenient size, furnished with a secure lock and key and so constructed that ballot papers can be introduced into it but cannot be withdrawn from it without the box being unlocked.

CROWD CONTROL

The Returning Officer must ensure the smooth flow of processes and persons; from arranging furniture, equipment, and manning the election room during the polling day, to ensuring the free flow of voters from the entrance, to the person checking

credentials, to the person handing out the ballot papers. In addition the Returning Officer must ensure that the marked ballot papers are inserted into the ballot box.

(2) In arranging the furniture, equipment and manning of an election room on polling day, the Returning Officer shall seek to ensure a free flow of electors from the entrance, via the officer checking their credentials to the officer handing out the ballot papers and thence through the barrier, one at a time, to the polling place and shall also position an officer in the vicinity of the ballot box to check that the market ballot papers are introduced into the ballot box thereafter by electors in an orderly manner and in accordance with these Rules.

3 For the guidance of electors in voting, each compartment in the polling place shall be posted with the directions written in conspicuous characters and approved by the Registrar.

4 (1) No candidate, except for the purpose of voting may be present in the election room during the taking of the poll nor shall any candidate approach nearer than seven metres to any of the doors of the election room during the hours that the poll is open.

(2) The representation of candidates by election agents in relation to candidates in the election room shall be governed by the following provisions of this paragraph—

(a) there shall be entitled to such representation—

- (i) every political party having a party candidate in the election; and
- (ii) every independent candidate;

(b) the representation to which a political party or independent candidate is entitled under this paragraph is representation by one election agent for each electoral table and, in addition, one further election agent to perform any or all of the duties involved in relieving another agent and acting as courier or messenger for the party or independent candidate for which or whom he is acting as agent.

COMMENCEMENT OF POLL

The Returning Officer, immediately before the commencement of the poll, must show the empty ballot box to those who are present in the election room. He must then insert any ballot papers from an advanced poll in the ballot box, lock the box, and maintain custody of the key himself. The box must then be placed within his view for the receipt of ballot papers. The Returning Officer must keep the ballot box locked until the conclusion of the poll.

5 The Returning Officer immediately before the commencement of the poll shall show the ballot box empty to such persons as may then be present in the election room so that they may see that it is empty and shall, after placing therein any ballot papers which may be delivered to him in respect of an advanced poll, then lock it up and keep the key himself and shall place the box in his view for the receipt of ballot papers keeping it so locked until the conclusion of the poll.

EXCLUSION FROM POLLING PLACE

The Returning Officer must not allow anyone to be present in the polling place at any time during the poll except—

- (a) voters who are actively engaged in voting;
- (b) friends of handicapped voters;
- (c) officers assisting the Returning Officer; and
- (d) a candidate's agent.

No person must be allowed into the election room without the permission of the Returning Officer.

6 The Returning Officer shall not allow anyone to be present in the polling place at any time during the poll except the electors engaged in voting, friends of handicapped electors, and the officers assisting him in the election room, and no other person (except an election agent) shall be allowed within the election room during the poll without the permission of the Returning Officer.

RETURNING OFFICERS' JURISDICTION

Where the Parliamentary Register within a constituency has been divided so that a Returning Officer is only responsible for administering the polling process to certain persons on the list, the Returning Officer must ensure that he is furnished with only that part of the Parliamentary Register which pertains to the part of the poll which is within his responsibility. He must ensure that the correct electoral table is assigned to him, and that he checks the credentials and provides ballot papers to only those voters who are assigned to him.

7 Where the responsibility for the taking of a poll has been divided pursuant to section 35, a Returning Officer shall ensure that—

- (a) he (assisted by any presiding officer assigned to him) is furnished with that part only of the parliamentary register which pertains to the part of the poll that falls within his own responsibility;
- (b) the relevant electoral table or tables are assigned to him; and
- (c) he checks the credentials of, and hands out ballot papers to, those electors for whom he is responsible and no others.

PROOF OF IDENTIFICATION

The Returning Officer must check the identity of each person intending to vote by comparing the particulars of the intended voter's identification documents against the information which he has in his possession. The Returning Officer must particularly observe if the intended voter has already voted. If the Returning Officer is satisfied that the identification provided is accurate he must draw a line through the voter's name on the copy of the parliamentary register, then provide the voter with one ballot paper.

8 A Returning Officer or presiding officer shall check the identity of each intending elector by examining his signed voter's card or other means of identification produced, and verifying from the copy of the parliamentary register in the officer's possession that the elector is not recorded as having already voted. If the Returning Officer or presiding officer is so satisfied, and subject to any challenge under section 50, a line shall be drawn through the elector's name on the copy of the parliamentary register and one ballot paper shall be given to the elector.

AFTER AN ELECTOR VOTES

After a voter has voted and folded the ballot, the Returning Officer must verify the mark, and then the ballot must be inserted into the ballot box in the presence of the Returning Officer.

9 (1) An elector receiving a ballot paper shall proceed forthwith through the barrier to one of the compartments of the polling place and shall there, with the indelible pencil or pen provided mark his ballot paper and fold it up, so that it cannot be seen for whom he has voted but the official mark thereon is visible upon it.

(2) The elector shall then display the folded ballot paper to the Returning Officer, permit the mark to be verified, and then put it into the ballot box in the presence of the Returning Officer without showing the front of it to any person present.

(3) An elector shall vote without undue delay and, having put his ballot paper into the ballot box, he shall withdraw from the election room forthwith.

AFTER THE COUNT

The Returning Officer, must count the votes in the presence of the candidates, and after the count the Officer must divide and seal the ballot papers into separate packets as follows—

Counted ballot papers in one packet, rejected ballot papers in one packet, spoilt ballot papers in one packet, and unused ballot papers in his possession in the final packet; and

On each packet the Returning Officer must further provide a description of the contents, the date of the election, and the name of the constituency;

Finally, all of the packets must then be delivered to the Registrar accompanied by a statement prepared by the Returning Officer which indicates the total number of ballot papers prepared by him for the election and account for them as indicated above.

10 At the count of votes the Returning Officer shall endorse any ballot paper appearing to him to be void under section 54 with the word "rejected" and if an objection is made by or on behalf of any candidate shall further endorse it with the words "rejection objected to".

11 (1) On the completion of the counting of the votes the Returning Officer in the presence of such of the candidates as may choose to attend, shall seal up in separate packets all—

- (a) counted ballot papers;
- (b) rejected ballot papers;
- (c) spoilt ballot papers; and
- (d) unused ballot papers in his possession,

and shall endorse on each packet a description of its contents, the date of the election, and the name of the constituency.

(2) The Returning Officer shall then deliver all the aforesaid packets so endorsed to the Registrar together with a statement showing the total number of ballot papers prepared by him for the election and accounting for them all under one of the heads above mentioned.

[Schedule amended by 1999:15 effective 11 May 1999; and by 2003:11 effective 9 June 2003]

Sections 46-49 • Ballot Papers and Voting Procedure

Every person who is registered for a constituency in which a poll is taking place should receive one ballot paper from a Returning Officer. The ballot paper, in the prescribed form, shall show the full names of all the nominated candidates in

alphabetical order. In addition to the name and photo of the candidate, the ballot paper shall include instructions on how to complete the ballot and show the name of the political party of the candidate and in any other case, the word "Independent".

At the time of issue, a Returning Officer should impress the official mark on the back of the ballot paper. Returning Officers must comply with directions provided by the Registrar, in respect of safe custody of the official mark.

Ballot papers

46 (1) The ballot of each voter at a parliamentary election shall consist of a paper, hereinafter called a ballot paper, in the prescribed form, showing the full names of all the nominated candidates in alphabetical order impressed with the official mark in accordance with subsection (3).

(2) There shall be shown on the ballot paper —

(a) instructions to voters on how to complete the ballot paper;

(b) the names and photographs of the candidates; and

(c) where a candidate is a party candidate, the name of his political party and in any other case, the word "Independent".

(3) The Returning Officer shall, at the time he issues a ballot paper in accordance with section 48, impress the official mark on the back of the ballot paper.

(4) The official mark shall be of such design and shall be impressed by use of such instruments as may be approved by the Registrar.

(5) All Returning Officers and other persons concerned with parliamentary elections shall comply with such directions as may be given by the Registrar regarding the safe custody of any instrument for impressing the official mark.

[subsection (2) amended by 2007 Amendment Act]

Premises not to be used as committee rooms

47 (1) No premises which are situated above, below, adjacent to or within the same curtilage as the election room shall be used by any person at any time on the polling day in a parliamentary election for any of the purposes of a committee room.

(2) Any person who uses or permits any other person to use any premises in contravention of subsection (1) commits an offence:

Punishment on summary conviction: a fine of \$500.

(3) In this section, "the purposes of a committee room" means any of the purposes of a political party or other association of persons interested or concerned in promoting the election of any candidate nominated in any parliamentary election.

PART VII **VOTING PROCEDURE**

A Returning Officer is not to provide a ballot paper to an elector unless he has obtained from an elector one of the following—

(a) a valid and signed voter's identification card; or

- (b) a current Bermudian driving licence; or
- (c) a valid special person's card issued by the Transport Control Department; or
- (d) a valid passport issued by a Commonwealth country; or
- (e) any other identification prescribed by law.

A Returning Officer must ensure that—

- (a) the voter has not already voted in the parliamentary election, and
- (b) the identification documents which are submitted by a voter do relate to that elector.

Issue of ballot papers

48 (1) Subject to sections 49 and 50 every person whose name is registered in the parliamentary register for a constituency in which a poll is taking place shall, upon application therefor be given one ballot paper by the Returning Officer and shall be allowed to vote thereat.

- (2) It is hereby declared that nothing in subsection (1) shall—
 - (a) entitle any person to vote at a parliamentary election who is not so entitled by section 4; or
 - (b) relieve any person from any punishment to which he may be or become liable under this Act for so voting.

Identification of intending voters

49 (1) A person shall not be given a ballot paper and shall not be allowed to vote at a parliamentary election unless—

- (a) he produces to the Returning Officer one of the following documents issued to him—
 - (i) a valid and signed voter's identification card;
 - (ii) a current Bermudian driving licence;
 - (iii) a valid special person's card issued by the Transport Control Board;
 - (iv) a valid passport issued by a Commonwealth country; or
 - (v) any other document of identity of a type prescribed; and
 - (b) the Returning Officer is satisfied that the documents produced relate to that person and that he is registered in the parliamentary register for the constituency and that he has not already voted in the parliamentary election.
- (2) Notwithstanding anything contained in subsection (1), in any case where a document produced by a person as a means of identification is defective only because it bears a date or date stamp showing that it expired before the date of production, such document shall still be accepted as valid or current as the case may be if the document:
- (a) bears a photograph of the person from which the person can be identified;
 - (b) bears the date of birth of the person and that date is verified by the Returning Officer; and
 - (c) bears the signature of the person.

[Section 49 amended by 1999:15 effective 11 May 1999; and by 2003:11 effective 9 June 2003]

Section 50 - Challenge of Intending Voters

The Returning Officer may, at the request of an election official or on his own

initiative, require an intending voter to read and sign a declaration as to his registration and entitlement to vote. Such declaration affirms the truth of the identification document submitted for the purpose of voting. If a voter refuses to comply with the requirement, the Returning Officer shall not furnish the voter with a ballot paper or allow him to vote.

Challenge of intending voters

50 (1) The Returning Officer, at the request of the election agent of any candidate or on his own initiative may require any person claiming to vote at a parliamentary election to read aloud or repeat after him and sign before him a declaration in the prescribed form and if the person so required does not comply with that requirement, the Returning Officer shall not give him a ballot paper or allow him to vote, notwithstanding section 48(1):

Provided that the reading and signing of such a declaration as aforesaid shall not entitle any person to vote at a parliamentary election unless he is entitled to vote by section 4 or relieve him from any punishment to which he may be or become liable for so voting:

Provided further that the requirements of this subsection shall be in addition to and not in derogation of section 49.

(2) Every request made by the election agent of any candidate for the purposes of subsection (1) shall be made in writing, specifying the grounds of the request, and the Returning Officer shall disregard any request which is not so made:

Provided that nothing in this subsection shall be taken to prevent the submission by or on behalf of a candidate to the Returning Officer, before or during the taking of a poll, of a list of the names of intending voters whom it is proposed to challenge so long, however, that an individual request in conformity with this subsection is made to the Returning Officer in respect of each such person so challenged before he is given a ballot paper.

Section 51 – Marking of Ballot Papers

A person voting at an election shall secretly mark his ballot paper for one candidate only and shall place it in the ballot box in the presence of the returning officer

Marking the ballot paper

51 (1) Subject to section 52, every person voting at a parliamentary election shall secretly mark his vote on the ballot paper given to him and, without revealing his vote, shall place the ballot paper in a closed box (hereinafter referred "the ballot box") in the presence of the Returning Officer.

(2) A person voting at a parliamentary election in a constituency shall not be entitled to vote for more than one candidate on a ballot paper in respect of the vacancy to be filled at that parliamentary election.

[Section 49 amended by 2003:11 effective 9 June 2003]

Section 52 - Incapacitated Voters

If a voter is blind, unable to read, or physically incapacitated to the extent that he is unable to vote in accordance with normal voting procedure, the Returning Officer must assist him in the voting procedure. The voter must take an oath attesting to his inability to vote without assistance, The Returning Officer must assist the voter by marking his ballot paper in the manner in which the voter instructs, and placing the ballot paper in the box. If the voter so wishes, this procedure should be executed in the presence of a presiding officer and a friend.

Incapacitated voters

52 The Returning Officer, on the application of any parliamentary elector who is blind, unable to read or so physically incapacitated as to be unable to vote in the manner prescribed by section 51 to assist him in voting, shall require the elector making the application to take an oath in the prescribed form of his incapacity to vote without assistance and shall thereafter assist the elector by marking his ballot paper in the manner directed by such elector and if he so requests in the presence of one other presiding officer and a friend, and shall place the ballot paper in the ballot box.

Section 53 - Spoilt Ballot Papers

If a voter has inadvertently destroyed his ballot paper to the extent where it can no longer be used as a ballot paper, he may receive another ballot paper if the Returning Officer is satisfied that the act was done without malice. The spoilt ballot paper must be immediately cancelled, but kept by the Returning Officer.

Spoilt ballot papers

53 A person voting at a parliamentary election who has inadvertently dealt with his ballot paper in such a manner that it cannot conveniently be used as a ballot paper may, on delivering it to the Returning Officer and on proving the fact of the inadvertence to the satisfaction of the Returning Officer, obtain another ballot paper in the place of the one so delivered up (hereinafter referred to as a "spoilt ballot paper") and the spoilt ballot paper shall immediately be cancelled but shall be preserved by the Returning Officer.

Section 54 - Rejected Votes

This section describes the manner in which rejected votes are to be dealt with. Rejected votes are otherwise known as "void ballot papers". Section 54 states that a ballot paper must not be counted—

- (a) if it does not have the official parliamentary mark on the back;
- (b) if votes are given for more than one candidate in the constituency concerned;
- (c) if the voter can be identified on the paper, and
- (d) if it does not indicate the candidate for whom the voter intended to vote,

The Returning Officer must, on finding a void ballot paper at vote counting, endorse it with the word "rejected". If a candidate or his agent objects to the rejection, the Returning Officer must further endorse the ballot to read "rejection objected to".

Void ballot papers

- 54 (1) Any ballot paper —
- (a) which does not have the official mark duly impressed upon its back;
 - (b) on which votes are given for more than one candidate at the parliamentary election in the constituency concerned;
 - (c) on which anything is written or marked by which the voter can be identified; or
 - (d) which is unmarked or which does not indicate with sufficient clarity the candidate for whom the elector intended to vote, shall be void and shall not be counted.

- (2) A ballot paper on which a vote is marked —
- (a) elsewhere than in the proper place; or
 - (b) otherwise than by means of a cross; or
 - (c) by more than one mark in respect of a candidate voted for,

shall not by reason thereof be deemed void if an intention that the vote shall be for one candidate clearly appears and the way the ballot paper is marked does not of itself identify the voter and it is not shown that he can be identified thereby.

(3) It is hereby declared that nothing contained in the Rules set out in the Schedule or in any directions prescribe by such Rules shall be construed as extending or adding to subsections (1) or (2).

[Section 54 amended by 2003:11 effective 9 June 2003]

Section 55 — Arrest of Voter for Personation

If at any time prior to a voter's departure from the election room, a candidate or his election agent has reasonable cause to believe that the voter is impersonating another for the purpose of voting, a Returning Officer may order a police officer to arrest the voter.

Arrest of voter for personation

55 (1) If at any time a person applies for a ballot paper for the purpose of voting at a parliamentary election in a constituency, or after he has applied for a ballot paper for that purpose but before he has left the election room, a candidate or his election agent declares to the Returning Officer that he has reasonable cause to believe that that person has committed an offence of personation and undertakes to substantiate the charge in a court of law, the Returning Officer may order a police officer to arrest that person and the order of the Returning Officer shall be sufficient authority for the police officer to do so.

(2) A person arrested in accordance with this section shall not by reason only thereof be prevented from voting.

(3) A person arrested under subsection (1) shall be dealt with as a person taken into custody by a police officer without a warrant charged with an offence triable summarily.

PART VIII

CLOSE OF POLL PROCEDURE

Section 56 - Count of Ballots

Immediately after the close of poll the Returning Officer must seal the ballot box. Then, in the presence of candidates, and no more than three representatives per candidate, the Returning Officer must open the ballot box and count the votes given to each candidate. If a candidate is absent from the vote count, he may nominate an agent to act on his behalf.

A Returning Officer may re-count the votes if he believes that the demand of a candidate or his agent, for the re-count is reasonable. In the event of a re-count, the Returning Officer may, in his own discretion, conduct further recounts, but the result of the poll is determined by the final vote count.

When the final result is obtained, the Returning Officer has the responsibility of publicly declaring the elected candidate.

Count of ballots

56 (1) Immediately after the close of the poll at a parliamentary election, the Returning Officer shall seal the ballot box so as to prevent the introduction of additional ballot papers and shall take charge of such box and shall then, in the presence of such of the candidates as may choose to attend, and such other persons whom the Returning Officer shall permit to be present not exceeding three persons for each candidate, open the ballot box and ascertain the result of the poll by counting the votes given to each candidate:

Provided that any candidate who is not present at the count of votes may nominate one person as his agent to be present thereat in his place.

(2) Immediately after the counting of the votes pursuant to subsection (1) has terminated, a candidate or his agent present at the count may demand a recount and thereupon, unless the Returning Officer considers the demand to be unreasonable having regard to the result of the first count, he shall proceed to re-count the votes accordingly to ascertain the result of the poll.

(3) In the event of a re-count of votes —

(a) every other candidate or his agent shall have the right to demand a further re-count, and the Returning Officer may in his own discretion conduct further re-counts;

(b) the result of the poll shall be determined by the final count of the votes.

(4) When the result of the poll has been ascertained the Returning Officer shall, subject to section 57 forthwith publicly declare to be elected the candidate to whom the majority of the votes has been given.

(5) References in this section to the ballot box shall, where more than one ballot box is used pursuant to section 35(2) be construed as a reference to all the ballot boxes so used at the parliamentary election in the constituency concerned.

[Section 56 amended by 2003:11 effective 9 June 2003]

Section 57 - Procedure in Event of a Tie

In the event of a tie and it becomes difficult to fill the vacancy required to be filled at an election, the Returning Officer must submit to the Deputy Governor a report of the tie.

Procedure in the event of a tie

57 (1) Where it appears to the Returning Officer that as a result of an equality of votes cast between any of the candidates for election it is not possible to declare the election of a candidate as respects a vacancy failing to be filled at a parliamentary election in the constituency, then the Returning Officer shall report the circumstances of the casting of the equality of votes to the Deputy Governor forthwith.

(2) In any case where a report under subsection (1) has been duly made, the parliamentary election in the constituency concerned shall be deemed to be void; and a bye-election shall ensue within the next succeeding period of two months to fill the vacancy not duly filled at such parliamentary election.

[Section 57 amended by 2003:11 effective 9 June 2003]

Section 58-59 Return of Writ of Election

The Returning Officer, at the end of a parliamentary election, must complete the writ of election, and must return it, together with the name of the elected candidate, to the office of the Deputy Governor no later than the second day after the end of the election.

Return of writ of election

58 At the conclusion of a parliamentary election the Returning Officer shall duly complete the writ of election according to its terms and shall return the same together with the name of the candidate who has been declared elected into the office of the Deputy Governor not later than the second day after the day on which the parliamentary election was concluded:

Provided that if such second day is an excepted day the writ shall be returned not later than the next succeeding day that is not an excepted day.

[Section 58 amended by 2003:11 effective 9 June 2003]

Disposal of deposits

59 The following provisions shall have effect with respect to each deposit of two hundred and fifty dollars required to be made under section 32, that is to say —

- (a) if after such deposit is made the candidate in respect of whom it is made withdraws from the election pursuant to section 37, his deposit shall be returned to the person who made it;
- (b) if such candidate dies after his deposit is made and before polling commences, such deposit shall, if made by such deceased candidate, be returned to his estate representative or, if not, it shall be returned to the person who made it;
- (c) if such candidate is not elected and the number of votes polled by him does not exceed one eighth of the total number of ballot papers counted, his deposit shall be forfeited to the Crown and shall be paid into the Consolidated Fund;
- (d) in any other case the amount deposited shall be repaid to the person who made the deposit as soon as possible after the result of the election has been declared.

PART IX

OFFENCES

Section 60-68 Returning Officer to be Conservator of Peace

Every Returning Officer at an election during polling hours may call on the assistance of other persons to aid in the maintenance of peace and good order. A Returning Officer may arrest or order to be arrested any person who disturbs the peace and good order at an election. A Returning Officer may also have an arrested person imprisoned until the close of the polls.

Secrecy during and after poll

60 (1) Every candidate, officer, clerk, agent or other person in attendance at an election room or at the counting of the votes shall maintain and aid in maintaining the secrecy of the voting, and no candidate, officer, clerk, agent or other person shall—

- (a) at the election room, interfere with, or attempt to interfere with, an elector when marking his ballot paper, or influence or attempt to influence the choice of an elector or otherwise attempt to obtain information as to the candidate for whom any elector is about to vote or has voted;

- (b) at any time, communicate any information as to the manner in which any ballot paper has been marked in his presence in the election room;
- (c) at any time or place, directly or indirectly, induce or endeavour to induce any voter to show his ballot paper after he has marked it, so as to make known to any person the name of the candidate for or against whom he has cast his vote;
- (d) at any time, communicate to any person any information obtained at an election room as to the candidate for whom any elector at the election room is about to vote or has voted; or
- (e) at the counting of the votes, attempt to obtain any information or communicate any information obtained at the counting as to the person by whom any vote is given in any particular ballot paper.

(2) Notwithstanding subsection (1)(a) an elector who at the election room wears a shirt or other apparel having thereon a badge, sticker, sign, emblem, symbol, word or other mark indicating connexion with or support for a political party shall not be guilty of an offence.

(3) No elector shall, except when unable to vote in the manner prescribed by this Act on account of inability to read, blindness or other physical incapacity —

- (a) upon entering the election room and before receiving a ballot paper, openly declare for whom he intends to vote;
- (b) show his ballot paper, when marked, so as to allow the name of the candidate for whom he has voted to be known; or
- (c) before leaving the election room, openly declare for whom he has voted.

(4) Any person who contravenes or fails to observe any provision of this section commits an offence.

(5) It shall be the duty of a Returning Officer to draw the attention of any elector who has contravened subsection (2) to the offence that he has committed and to the penalty to which he has rendered himself liable, but such elector shall nevertheless be allowed to vote in the usual way.

Misconduct at parliamentary election

61 (1) Any person —

- (a) who at any parliamentary election —
 - (i) behaves in a violent, offensive or disorderly manner in or about or within fifty metres of the election room or improperly disturbs or impedes the proceedings;
 - (ii) fails to leave an election room when requested so to do by the Returning Officer;
 - (iii) interferes with a voter who is engaged in voting;
 - (iv) obtains or attempts to obtain in the election room information as to the candidate for whom a voter is about to vote or has voted;
 - (v) directly or indirectly induces or attempts to induce any voter to display his ballot paper so as to show the name of any candidate for whom the voter has voted;
- (b) who in the course of any proceedings before the Registrar behaves in a violent, offensive or disorderly manner or improperly disturbs or impedes the transaction of business; or
- (c) who, subject to subsection (2), during the hours when the poll is being taken on polling day, assembles or congregates with other persons in an election room or within fifty metres thereof without the permission of the Returning Officer for the constituency, commits an offence.

- (2) Subsection (1)(c) shall not apply to —
- (a) any voters who are waiting to vote at such election room and who obey such instructions as may be given by the Returning Officer or any police officer for the purpose of forming a queue with other voters so waiting; or
 - (b) any person who is only lawfully remaining in, entering or leaving such room with reasonable despatch; or
 - (c) any person who assembles or congregates in the manner referred to in that subsection, if he so assembles and congregates—
 - (i) on private property; and
 - (ii) that property is not property on which the election room is situated.

(3) Where a person commits an offence against this section:

Punishment on summary conviction: imprisonment for 1 year or a fine of \$500 or both such imprisonment and fine.

[Section 61 amended by 2012 Amendment Act effective 4 May 2012]

Returning Officer to be conservator of peace

62 Every Returning Officer, during an election, during the hours that the polls are open, may —

- (a) require the assistance of police officers or other persons present to aid him in maintaining peace and good order at the election;
- (b) arrest or cause by verbal order to be arrested, and place or cause to be placed in the custody of any police officer or other persons, any person disturbing the peace and good order at the election; and
- (c) cause such arrested person to be imprisoned under an order signed by him until an hour not later than the close of the poll.

No person to carry offensive weapons or propaganda apparatus on polling day

63 (1) No person shall arm himself, during any part of polling day, with any offensive weapon and thus armed approach within a kilometre of an election room, unless called upon so to do by lawful authority.

(2) No person shall —

- (a) furnish or supply any loud speaker to any person with intent that it be carried or used on any automobile truck or other vehicle for the purposes of political propaganda on polling day in a constituency where a parliamentary election is taking place; or
- (b) with any such intent, carry on any automobile, truck or other vehicle any such loud speaker on polling day.

(3) Any person who contravenes any of the provisions of this section commits an offence against this Act:

Punishment on summary conviction: imprisonment for 1 year or a fine of \$250 or both such imprisonment and fine.

Bribery

64 A person shall be guilty of bribery —

- (a) if he directly or indirectly, by himself or through any other person on his behalf, gives or lends, or agrees to give or lend, or offers or promises, or promises to procure or to endeavour to procure, any money or valuable consideration to or for any parliamentary elector, or to or for any other person, in order to induce such elector to vote or refrain from voting at a parliamentary election, or corruptly does any such act or thing as aforesaid on

- account of any parliamentary elector having voted or refrained from voting at a parliamentary election;
- (b) if he directly or indirectly, by himself or through any other person on his behalf, gives or procures, or agrees to give or procure, or offers or promises, or promises to procure or to endeavour to procure, any office, place or employment to or for any parliamentary elector, or to or for any other person, in order to induce such elector to vote or refrain from voting at a parliamentary election, or corruptly does any such act or thing as aforesaid on account of any parliamentary elector having voted or refrained from voting at a parliamentary election;
 - (c) if he directly or indirectly, by himself or through any other person on his behalf, makes any gift, loan, offer, promise, procurement or agreement referred to in paragraph (a) or (b) to or for any person, in order to induce that person to procure or to endeavour to procure, the election of any person at a parliamentary election, or the vote of any parliamentary elector at a parliamentary election;
 - (d) if, upon, or in consequence of any such gift, loan, offer, promise or agreement, he procures or engages or promises or endeavours to procure, the election of any person at a parliamentary election, or the vote of any parliamentary elector at a parliamentary election;
 - (e) if he advances or pays or causes to be paid any money to or to the use of any other person, with the intent that that money or any part thereof should be expended in bribery at a parliamentary election; or if he knowingly pays or causes to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at a parliamentary election;
 - (f) if, being a parliamentary elector before or during a parliamentary election, he directly or indirectly, by himself or through any other person on his behalf, receives, or agrees or contracts for any money, gift, loan or valuable consideration, or any office, place or employment, for himself or for any other person, for voting or agreeing to vote, or for refraining or agreeing to refrain from voting, at a parliamentary election;
 - (g) if after a parliamentary election he directly or indirectly, by himself or through any other person on his behalf, receives any money or valuable consideration on account of any person having voted or refrained from voting, or having induced any other person to vote or to refrain from voting, at the parliamentary election.

Undue influence

65 (1) A person shall be guilty of undue influence if he directly or indirectly, by himself or through any other person on his behalf—

- (a) makes use of or threatens to make use of any force, violence or restraint; or
- (b) inflicts or threatens to inflict any temporal or spiritual injury, damage, harm or loss,

upon or against any person in order to induce or compel that person to vote or refrain from voting or on account of that person having voted or refrained from voting, at a parliamentary election, or to refrain from registering in a parliamentary register.

(2) A person shall also be guilty of undue influence if he directly or indirectly, by himself or through any other person, by abduction, duress, or any fraudulent device or contrivance—

- (a) impedes or prevents any person from freely exercising his right to vote at a parliamentary election or register in a parliamentary register; or
- (b) compels, induces or prevails upon any person either to vote or refrain from voting at a parliamentary election.

Punishment for bribery and undue influence

66 Where a person is convicted on indictment of bribery or of undue influence:

Punishment: imprisonment for 2 years or a fine of \$1,000 or both such imprisonment and fine.

Standing for election of unqualified persons

67 Any person who, not being qualified under this Act to be elected at a parliamentary election and knowing that he is not so qualified, allows himself to be nominated as a candidate or to be elected at the election commits an offence against this Act:

Punishment on conviction on indictment: imprisonment for 2 years or a fine of \$1,000 or both such imprisonment and fine.

Personation and voting if not qualified

68 A person commits an offence against this Act who—

- (a) applies under this Act to be included in any parliamentary register in the name of some other person, whether such name is that of a person living or dead or of a fictitious person;
- (b) applies to be registered in the parliamentary register of a constituency knowing that he is not ordinarily resident therein;
- (c) except as authorized by section 52, applies for a ballot paper in the name of some other person, whether such name is that of a person living or dead or of a fictitious person;
- (d) having voted once at an election, applies at the same election for another ballot paper;
- (e) votes or attempts to vote at an election knowing that he is not qualified to vote at the election; or
- (f) induces or procures any other person to vote at an election knowing that such other person is not qualified to vote at the election.

Section 69 – 74 Offences Related to Voting

A Returning Officer commits an offence if he inscribes anything on the ballot paper which may reveal the identity of a voter. Moreover, Section 73 ‘Breaches of Official Duty’ stipulates that any person who is required to perform official functions under the Act commits an offence if he breaches his duty without reasonable cause.

Offences relating to voting

69 (1) A person commits an offence against this Act who —

- (a) forges a ballot paper or utters a forged ballot paper;
- (b) fraudulently alters, defaces or destroys a ballot paper or the official mark impressed thereon;
- (c) without authority under this Act, supplies a ballot paper to any person;
- (d) not being a person entitled under this Act to be in possession of a ballot paper, has, without authority, any ballot paper in his possession;
- (e) forges the official mark used for impressing on ballot papers;
- (f) has in his possession without lawful authority an instrument for impressing the official mark;
- (g) fraudulently puts or causes to be put into a ballot box a ballot paper or other paper;
- (h) fraudulently takes a ballot paper out of the election room;
- (i) without authority under this Act, destroys, takes, opens or otherwise interferes with a ballot box or book or packet of ballot papers;
- (j) without authority under this Act, prints any ballot paper or what purports to be or is capable of being used as a ballot paper at an election;

(k) forges a voter's identification card or at any election room utters a forged voter's identification card knowing the same to be forged;

(l) being a Returning Officer, places upon any ballot paper any writing, number or mark with intent that the elector to whom such ballot paper is to be, or has been, given may be identified thereby; or

(m) manufactures, constructs, imports into Bermuda, has in possession, supplies to any election officer, or uses for the purposes of an election, or causes to be manufactured, constructed, imported into Bermuda, supplied to any election officer, or used for the purposes of any election, any ballot box containing or including any compartment, appliance, device or mechanism in or by which a ballot paper may or could be secretly placed or stored or, having been deposited during polling, may be secretly diverted, misplaced, affected or manipulated.

(2) For the purposes of subsection (1) and any other provision of this Act, knowingly to do or omit to do an act is deemed to be fraudulent if to do or omit to do the act results or would be likely to result in the reception of a vote that should not have been cast or in the non-reception of a vote that should have been cast.

(3) Where a person commits an offence under this section:

Punishment on conviction on indictment: imprisonment for 2 years or a fine of \$1,000 or both such imprisonment and fine.

Supplying intoxicating liquor by way of organized treating

70 (1) Any person who on the polling day before the closing of the poll at any parliamentary election, by himself or with others gives or provides by way of organized treating, any intoxicating liquor for consumption by electors in connection with the holding of the parliamentary election, commits an offence:

Punishment on summary conviction: a fine of \$500.

(2) In this section "organized treating" means the giving or providing of intoxicating liquor to some person without charge or at a reduced or unduly small charge to the person consuming such liquor under some arrangement which but for the election would not have been made.

Disqualifications

71 Any person who is convicted of any offence under sections 60, 61, 64, 65, 67, 68 and 69 shall, whether or not any other penalty is imposed, be disqualified, for a period of six years from the date of the conviction, from being registered as a voter or voting at any parliamentary election and shall be further disqualified from being elected as a member of the House of Assembly or of being appointed as a member of the Senate during the whole of such period.

Publishing of forms

72 Any person who publishes, issues or prints, or makes any copy of a form referred to in this Act without the authority of the Registrar and without placing thereon the words "Copy only" in letters at least half an inch in height, commits an offence.

Breaches of official duty

73 (1) Any person who, being required under this Act to perform any official function thereunder, without reasonable cause, commits, or omits to do, any act in breach of his duty under such provisions commits an offence.

(2) Any employer who on being requested by an employee pursuant to section 36(3) to allow him sufficient time off work to enable him to travel to an election room and there record his vote fails to allow him such time or who penalizes an employee whom he has allowed time to so travel and vote commits an offence.

General penalty

74 Where a person commits an offence under this Act for which no specific penalty is provided:

Punishment on summary conviction: imprisonment for 9 months or a fine of \$500 or both such imprisonment and fine.

PART X

MISCELLANEOUS

Section 75 – Safe Custody Of Documents Relating To Election

The Registrar shall retain in safe custody for a period of one year all documents relating to a parliamentary election.

Registrar to retain documents

75 (1) The Registrar shall retain in safe custody for a period of one year all documents relating to a parliamentary election delivered to him by a Returning Officer pursuant to this Act and shall then, unless otherwise directed by an order of the Supreme Court, cause them to be destroyed.

(2) The Registrar shall not, except by or under the order of the Supreme Court, permit any other person to have access to or to inspect the documents retained by him under subsection (1).

Section 76 - Rules

The Governor is empowered to make rules prescribing the fees to be paid to Returning Officers and others for duties discharged in connection with a parliamentary election.

Rules

76 (1) The Governor shall make rules prescribing —

- (a) the fees to be paid to Returning Officers, presiding officers and other persons who discharge duties in connection with a parliamentary election;
- (b) the forms to be used in connection with this Act; and
- (c) any other matter required to be prescribed by this Act.

(2) Rules made under subsection (1) shall be subject to affirmative resolution procedure.

[Section 76 amended by 2012 Amendment effective 4 May 2012]

PART B

ELECTION FORMS AND FEES

**AS SET OUT IN
PARLIAMENTARY
ELECTION RULES 1979**

The Parliamentary Election Rules 1979 were extensively amended by the Parliamentary Election Amendment Act 2012. The amendments to the 1979 Rules provided for increased fees to be paid to persons, including public officers, who discharge duties in connection with a parliamentary election. However, in respect of fees that are prescribed at an hourly rate, public officers are to be paid in respect of only the hours they discharge such duties outside of their normal working hours.

The amendments also provide for registration officers and scrutineers to be paid fees for the discharge of certain duties under the Act.

Please note that Form 2, in the First Schedule to the Rules, as amended, is the prescribed form to be used under both sections 10A and 10C. A warning is also added to Form 2 which alerts the person completing the form that section 145 of the Criminal Code makes it a criminal offence for a person to give a public officer (which would include the Registrar) information which that person does not believe to be true, intending thereby to cause, or knowing it likely to cause, the public officer to do, or omit to do, something.

PARLIAMENTARY ELECTION RULES 1979

FIRST SCHEDULE

Form 2

*Notification of change of registered particulars
(Section 10A and 10C)*

I,(state your full name) of(state your residential address including postcode and land valuation assessment number) currently registered in the parliamentary register of theconstituency (state the name of the constituency) hereby notify the Parliamentary Registrar^{3/4}

(a) that I have changed my name from(state your former name) to(state your current name), and I attach the following document certifying the change of name:(state type of document);

(b) that I have changed my address from (*state your former residential address including postcode and land valuation assessment number*) and that I now reside at (*state your current residential address including postcode and land valuation assessment number*);

(c) that I wish to have my name removed from the parliamentary register for the constituency where I was previously registered namely, (*state name of former constituency*) and transferred to (*state the name of the constituency where you now reside and where you wish to be registered*).

Note: please delete the paragraphs that do not apply to you.

Signature of applicant

Date:

Registered by:

Date:

WARNING: Section 145 of the Criminal Code makes it a criminal offence for a person to give any public officer information which that person does not believe to be true intending thereby to cause, or knowing it to be likely to cause, any public officer to do or omit to do anything which such public officer would not otherwise do or omit to do.

[Form 2 amended by 2012Amendment Act effective 4 May 2012]

Form 3
Bermuda Voter's Identification Card
(Section 25(5))

Photo

Parliamentary Registrar

Name

Date of birth

Date of issue

Date of expiry

Signature

[Form 3 amended by BR 31/1999 effective 14 May 1999]

Form 4
Nomination Paper

(Section 32 (2))

We the undersigned (full name of proposer) of (residential address) and (full name of seconder) of (residential address), being parliamentary electors of the [blank] constituency, do hereby, as proposer and seconder respectively, nominate the following person as a proper person to serve as member for the said constituency in the House of Assembly and certify that he is not nominated for any other constituency and

neither of us has nominated any other candidate at this parliamentary election.

Surname	Other Names	Residential Address	Profession or Occupation

(Signed)
Proposer

Seconder

Dated this [blank] day of [blank] 20 [blank]

I accept candidature for the forthcoming parliamentary election in the above constituency and no other. * I wish it to be shown in all the election documents that I am standing for election on behalf of the [blank]. Party, and I attach a letter from/on behalf of the chairman of that Party showing that my candidature is endorsed by that Party.

*
(Delete if not appropriate)

Signed

Prospective Candidate.

Dated this [blank] day of [blank] 20 [blank]

N.B. Attention is drawn to the provisions of the Legislature (Qualification and Disqualification) Act 1968, which require an undertaking to be given by persons holding or acting in a "prescribed office" within the meaning of that Act as a condition of standing for election.

**Form 5
Ballot Paper**

(Section 46)

Jane Doe	*	**	
John Doe	*	**	
Bob Smith	*	**	

* photograph of candidate

** political party of candidate if he is a party candidate, otherwise print "Independent".

Instructions to Voters

1. Place an X in the blank column opposite the name of the **CANDIDATE** you wish to be elected.
2. Do not place a mark opposite more than one name.
3. Make no other mark on the paper.
4. Fold the paper through the centre, from left to right, so that your vote cannot be seen.

[amended by 2007 BR]

Form 6
Declaration of Intending Voter
(Section 50)

I, (full name) of (address) do solemnly declare that —

- (1) I am registered in the parliamentary register of the [blank] constituency.
- (2) I have read (or have had read to me) and understand the provisions relating to the qualifications and disqualifications of parliamentary electors set out below.
- (3) I am entitled to vote at this parliamentary election in this constituency.
Dated this [blank] day of [blank] 20 [blank]

Signed and declared by the above named (full name) in the presence of [blank]

(Signature of declarant)

Returning Officer

*Provisions related to Qualifications and
Disqualifications of Electors*

- 1 Subject to the provisions of paragraph 2 below, a person shall be entitled to vote at a parliamentary election in a constituency if on the polling day he is registered in the parliamentary register for that constituency.
- 2 A person shall not be entitled to vote at a parliamentary election in any constituency if—
 - (a) he has ceased to be a Commonwealth citizen; or
 - (b) he has ceased to be ordinarily resident in Bermuda; or
 - (c) he is registered in the parliamentary register of another constituency; or
 - (d) he is disqualified from voting at a parliamentary election under section 71 of the Parliamentary Election Act 1978; or
 - (e) he is in prison or detained in a senior training school or, he having been sentenced to a term of imprisonment, preventive detention or corrective training, the adjudged term of his sentence has not yet expired whether or not he is then at large on licence, unless he has been granted a free pardon or has been granted remission under section 10 of the Prisons Act 1979; or
 - (f) he is a person suffering from mental disorder within the meaning of the Mental Health Act 1968 or is otherwise adjudged to be of unsound mind under any statutory provision.

**Form 7
(Section 52)**

Oath to be taken by an elector who is blind, unable to read or so physically incapacitated as to be unable to vote in the manner prescribed by section 51

I do swear/I do solemnly and sincerely affirm and declare that I am incapable of voting without assistance by reason of being blind/ unable to read/so physically incapacitated as to be unable to vote in manner prescribed by section 51*.

Sworn before me [blank]

Returning Officer for the [blank] Constituency.

Date [blank]

The fees stated below are set out in the Second Schedule to the Rules.

Parliamentary Election Rules 1979

SECOND SCHEDULE

(Rule 3(1))

The following persons shall be paid the specified fees for discharging duties under the Act—

Scrutineers: \$15 per meeting.

Registration Officers \$15 per investigation of a person's registered particulars that is approved as complete by the Registrar

Returning Officers: \$500 a contested election

Returning Officers: \$150 an uncontested election

*The voter should only be required to repeat the incapacity from which he is suffering.

Returning Officers:	\$500 an advanced poll. If the advanced poll is held on more than one day, \$500 in respect of each day of the advanced poll.
Returning Officers:	\$150 for nomination day
Presiding Officers:	\$20 per hour for discharging duties on polling day and at an advanced poll, between the hours of 7:00 in the forenoon and 8:00 in the afternoon and thereafter, when requested by the Returning Officer to assist in the counting of ballots \$25.00 per hour. Presiding officers who are public officers shall be paid fees in respect of only the hours they discharge such duties outside of their normal working hours.
Other persons employed temporarily to assist in the election procedure:	\$10 per hour. Persons so employed who are public officers shall be paid fees in respect of only the hours they discharge such duties outside of their normal working hours.

[Second Schedule replaced by 2012 Amendment Act effective 4 May 2012]

PART C

MUNICIPALITIES

ACT 1923

**POWERS OF A JUSTICE
OF THE PEACE
IN RESPECT OF
MUNICIPAL
ELECTIONS**

Justices of the Peace have statutory duties in respect of Municipal Elections under the Municipalities Act 1923. The Municipalities Reform Act 2010 amended the 1923 Act and was intended to change the boundaries of the municipalities and to reform the franchise of the municipal areas of the Corporations of Hamilton and St. George.

By virtue of the Municipalities (Election) Order 2011 made on 5th April 2011 under section 9B of the 2010 Municipalities Reform Act the Parliamentary Election Act 1978 was modified to govern the conduct of municipal elections. Section 3 of that Order provides-

Application of Parliamentary Election Act 1978 to municipal elections

3 The Parliamentary Election Act 1978, read with the modifications to that Act set out in this Order, shall apply to municipal elections under section 9 of the Municipalities Act 1923.

Please note **

A consolidated version of the Parliamentary Election Act 1978 as modified by and incorporating all of the amendments prescribed in the Municipalities (Election) Order 2011 may be obtained by any Justice of the Peace from the Parliamentary Registrar's Office.

THE MUNICIPALITIES ACT 1923

CONSTITUTION AND STATUS OF MUNICIPAL CORPORATIONS

Section 7 - Constitution of Corporations

The Corporations of Hamilton and St. George comprise respectively a Mayor, three Aldermen and five Common Councillors. The Mayors and Aldermen are Justices of the Peace for their respective municipalities by virtue of their office.

Constitution Of Corporations

7 (1) The Corporations of Hamilton and St. George's shall each consist of a Mayor, three Aldermen and five Common Councillors.

(2) The Mayors and Aldermen for the time being shall be ex officio Justices of the Peace for their respective municipalities, but shall not exercise any judicial functions in any cause or matter wherein the Corporation of which such Justice is a member is a party.....(6) Every Mayor, Alderman and Common Councillor elect, before assuming the duties of his office, shall be sworn before any Justice of the Peace in the form prescribed for the judicial oath within the meaning of the Promissory Oaths Act 1969 [title 2 item 21].

MUNICIPAL ELECTIONS

Section 9 – Election of Mayor, Alderman and Common Councillors

This section of the Municipalities Act 1923 contains the electoral provisions relating to municipal elections. Since the coming into force of the Municipalities (Election) Order 2011 this section provides that the Parliamentary Election Act 1978 applies to the conduct of municipal elections and must be read as modified by that Order.

The Municipalities Order 2011 is available online at www.bermudalaws.bm or a hard copy can be obtained by any Justice of the peace from the Parliamentary Registrar's Office.

Election of Mayor, Aldermen and Common Councillors

9 (1) In 1979 and in every third calendar year thereafter an ordinary municipal election shall be held for the election of the Mayor, Aldermen and Common Councillors of each Corporation.

(2) Where a vacancy occurs in the office of Mayor or of an Alderman or Common Councillor, an extraordinary municipal election shall be held to fill the vacancy:

Provided that such a vacancy shall not be filled if it occurs after notice has been given, under paragraph 21 of the First Schedule, of an ordinary municipal election.

(3) Subject to subsection (4) and to section 27 of the Parliamentary Election Act 1978 (as modified by the Municipalities (Election) Order 2011), the Secretary of a Corporation in consultation with the Parliamentary Registrar shall, by notice published in the Gazette, appoint the polling day for a municipal election.

(4) In the case of an ordinary municipal election, the day appointed as polling day shall be—

- (a) a day (other than a Saturday, Sunday or other public holiday) in the week following the first Sunday in May; and
- (b) not earlier than 28 days after the publication of the notice under subsection (3), nor later than two months after the publication of the notice.

[Section 9 amended by BR21/2011]

PART D

THE REFERENDUM ACT 2012

**PROVISIONS
RELEVANT TO THE
FUNCTIONS, DUTIES AND
POWERS OF JUSTICES OF THE
PEACE AS
RETURNING OFFICERS AND
ELECTION OFFICERS FOR A
REFERENDUM**

A referendum (also known as a vote on a ballot question) is often described as a direct vote in which an entire electorate is asked to either accept or reject a particular proposal. This may result in the adoption of a new law or simply a specific government policy. It is a vehicle normally used to gauge sentiment on matters of public interest.

In Bermuda's recent past only 2 referendums have been held and in both cases separate legislation was drafted specifically for the purpose of holding a referendum, that is to say, the Capital Punishment Referendum Act 1989 and the Independence Referendum Act 1995. The process used for carrying out the referendums was similar to that of holding a general election and both Acts applied the provisions of the Parliamentary Election Act 1978 with modifications, to the holding of each referendum

A Referendum Act was passed in Bermuda in 2012 setting out the general framework for holding referendums under which individual referendums can be held, thereby eliminating the need to construct separate legislation each time a referendum is to be held. Although the framework for holding referendums is set out in the Act a "mini-bill" is required to provide for the specifics of a referendum, including the wording of the referendum question.

Given the similarities in operational methodology between conducting a general election and conducting a referendum, the Parliamentary Election Act 1978 was used as the basis for the Referendum Act 2012. Modifications to the Parliamentary Election Act 1978 were necessary for many of the provisions relating to the holding of a parliamentary election to apply to the conduct of a referendum. Not every section of the Parliamentary Election Act 1978 needed to be included and the Referendum Act 2012 specifically sets out and contains those modified provisions relating to the holding of a referendum.

Provision is also made for advanced polls for the sick, infirm and absent voters. The duties of Returning Officers remain consistent with those duties in the general election process, which include inter alia, receiving parliamentary registers, the authority to appoint presiding officers and the authority to have persons removed from the area because of misconduct. The procedures for voting in a referendum are laid out with specificity and the same standards of ethical behaviour and secrecy required during and after an election also apply to holding a referendum.

The Referendum Act 2012 gives the Premier the ability to establish an ad hoc committee comprised of a chairperson, a lawyer and three members of the Legislature who will be responsible for advising the Premier, establishing best practices and ensuring public awareness of the question or questions for

consideration. This means that the Committee can make recommendations for educational campaigns prior to the referendum so that the public has a better understanding of how the referendum process works, how a ballot is to be marked and more importantly, what the referendum issues and implications are.

The criteria for determining the results of the referendum are also included in the Referendum Act 2012. A referendum question shall be answered if 50% or more of all registered voters have voted in the referendum and 50% or more of the ballots are of the same response.

The Act speaks to the process of holding a referendum, inclusive of the issuance of a Writ and the provision to postpone a referendum. It also provides for only registered voters to participate in a referendum. Part 3 of the Referendum Act 2012 deals with calling a referendum and Parts 4 to 8 together with the Schedules to the Act deal with conducting a poll, polling place offences, the count, after the poll and other procedures/forms.

A Justice of the Peace therefore need only refer to the Referendum Act 2012 when conducting a referendum and a copy of the Act is available online at www.bermudalaws.bm or a hard copy can be obtained by any Justice of the Peace from the Parliamentary Registrar's Office.

PART E

OFFICIAL STAMP
OF A JUSTICE OF
THE PEACE

SUMMARY OF STAMP USAGE

A Justice of the Peace may use an official stamp when attesting documents or performing his duties. A Justice of the Peace is not however a Notary Public and a Justice of the Peace is not qualified or authorized to notarize documents. A Justice of the Peace does not have the same powers as a Notary Public and cannot sign in place of a Notary. Some powers of a Justice of the Peace are similar to those of a Commissioners of Oaths in some circumstances and those powers are always set out in the authorizing statute.

A Justice of the Peace can obtain information about the types of stamps and seals that are appropriate for use by a Justice of the Peace and where to obtain them from the Parliamentary Registrar's Office.

Examples of instances where a Justice of the Peace can use his official stamp are as follows-

1. To stamp any affidavit sworn before the JP.
2. To stamp any proclamations or official notices published by the JP.
3. To stamp declarations made in the JP's presence.
4. To stamp Orders made by the JP.
5. To stamp references given by the JP to indicate that the reference was provided by a JP.
6. To stamp written statement made on oath in front of the JP.

PART F

OTHER STATUTORY PROVISIONS

RELEVANT TO THE
FUNCTIONS, DUTIES AND
POWERS OF JUSTICES OF THE
PEACE IN BERMUDA

4 BASIC GROUPS OF POWERS

In addition to the powers relating to the election and referendum processes as set out in **PART A**, **PART C** and **PART D** of this Manual, Justices of the Peace have 4 basic groups of powers.

As stated earlier in this manual, as a result of the provisions of the Police and Criminal Evidence Act 2006 “PACE Act” a Justice of the Peace no longer has the powers in relation to search and seizures. These powers, which have been transferred to a magistrate, include the power to sign search warrants or issue apprehension warrants or warrants to seize and detain property, or warrants empanelling a jury, or warrants authorizing a police officer to require a qualified medical practitioner to take samples of blood or urine. Justices previously had these types of powers under numerous statutes including the Criminal Code Act 1907; the Indictable Offences Act; the Obscene Publications Act; the Misuse of Drugs Act and the Road Traffic Act 1947.

The four basic groups of powers of a Justice of the Peace are:

1. The power to swear proclamations, affidavits and oaths
2. The power to take declarations
3. Powers in relation to Riots
4. Misc

For ease of reference the various pieces of legislation which utilize each basic group of powers are set out in the following pages.

It is important to note that there remain many references in the laws of Bermuda to a Justice of the Peace power to issue warrants to search, seize and detain although these powers are no longer valid after the PACE Act was brought into force. The references to those powers still remain in the statutes because no consequential amendments have been made to the Acts either amending or deleting the provisions.

As stated previously those functions can now only be performed by a magistrate.

REVISED LAWS OF BERMUDA
LAWS APPLICABLE TO THE OFFICE OF THE JUSTICE OF THE PEACE

NOTE: **Those laws where reference is still made to powers of a Justice of the Peace to issue a warrant to search, seize or detain which power should now be read as a power of a Magistrate after the introduction of the PACE Act are **NOT LISTED BELOW**.

<u>Title of legislative Provision</u>	<u>Revised Title #</u>	<u>Laws Item #</u>
Adoption Rules 1964	27	22
Advertisements Regulations Act 1911	20	9
Antarctic Regulations 1998		
Attachment Act 1874	8	46
Bankruptcy Act 1989	8	49
Bankruptcy Rules 1990	8	49 (a)
Bermuda Volunteer (Reserve Force) Act 1939	7	24
Bulk Sales Act 1934	17	27
Criminal Code Act 1907	8	31
Evidence Act 1905	8	10
Firearms (General) Regulations 1974	10	5 (a)
Friendly Societies Act 1868	13	11
Hotels (Licensing and Control) Regulations 1976	17	2 (b)
Interpretation Act 1951	1	1
Liquor Licence Act 1974	10	6
Magistrates Act 1948	8	15
Marriage Act 1944	27	1
Motor Car Act 1951	21	4
Motor Car Insurance (Third-party Risks) Act 1943	21	5
Pedlars Act 1874	17	33
Post Office Regulations 1933	24	1(a)
Powers of Attorney Act 1944	8	70
Promissory Oaths Act 1969	2	21
Protection of Justices Act 1897	8	17
Provost Marshall General Act 1965	8	5
Public Carriage Act 1949	21	9
Public Health Act 1949	11	1
Public Order Act 1963	10	1
Registration (Births and Deaths) Act 1949	28	1
St. George's Sewerage Act 1943	4	21
Timesharing (licensing and Control) Regulation 1982	26	22 (a)

BRIEF DESCRIPTIONS OF THE STATUTORY PROVISIONS LISTED ABOVE

The following descriptions relate to the list of legislative provisions set out above. These statutes contain the 4 types of basic powers of a Justice of the Peace.

Adoption Rules 1964 (rule 6 and the Certificate of Attestor) – This Rule gives a Justice of the Peace the power to attest to an adoption Order.

Advertisements Regulation Act 1911 (s. 2 (c)) – This Act relates to restrictions on advertisements but gives Justices of the Peace the power to exhibit proclamations and official notices and publish them.

Antarctic Regulations 1998 (regulation 9) – This regulation provides that a Justice of the Peace is an authorized person who can require a person to produce a permit to carry out certain activities.

Attachment Act 1874 (s. 2 (1)) – This Act deals with the attachment of a person's earnings where the individual is overseas. In those circumstances, under section 2 (1) a Justice of the Peace has the power to administer interrogatories or ask the questions set out in Form C of the schedule of any garnishee seeking relief under the Act. He also has the power to administer those interrogatories and ask the Provost General questions in the same way he would any other person seeking to garnish wages.

Bankruptcy Act 1989- (s. 124)- Under this Act any affidavit to be used in bankruptcy proceedings may be sworn before a Justice of the Peace.

Bankruptcy Rules 1990 (rules 10, 35 and 223) - Under these Rules any document, bond or affidavit of proof of debt shall be sufficiently attested if attested or sworn in Bermuda by a Justice of the Peace.

Bermuda Volunteer (Reserve Force) Act 1939 (s. 6(2)) –This Act governs the reserve police force. Justices of the Peace have the power to take the oath from a person accepted for service as a reserve officer.

Bulk Sales Act (s. 8) – This Act regulates circumstances where a vendor sells items in bulk. The vendor must provide to the purchaser a statement as to who his creditors are and the level of indebtedness. This statement which is set out in the schedule to the Act must be done by way of affidavit under oath. The Justice of the Peace has the power to swear this affidavit as would a Commissioner of Oaths.

Criminal Code Act 1907 - The Criminal Code gives Justices of the Peace various powers as well as outlining certain duties and responsibilities listed below:

- s. 101 – in circumstances where a crowd has gathered illegally Justices of the Peace have the power to command that they disperse.
- s. 114 – this section provides protection to Justices of the Peace from prosecution for taking unauthorized oaths if done so to preserve peace or for the punishment of offences or inquiries relating to sudden death.
- s. 132 – this section provides for a person to be guilty of an offence for making a report or statement amounting to a public mischief to a Justice of the Peace.
- s. 147 – this section deals with a Justice of the Peace duty to suppress a riot and if he fails to do so without reasonable excuse he is liable to a fine or imprisonment.
- S. 248 – provides a power to suppress a riot or order a riot to be suppressed.

Firearms (General) Regulations 1974 (reg. 5A) - This regulation provides for a Justice of the Peace to verify a signed statement.

Friendly Societies Act (s.19 & 20) – This Act is designed to govern the administration of Friendly Societies. Under this Act, a Justice of the Peace can authorize minors under the age of 15 to be admitted to the society. Justices of the Peace also have the power to examine the accounts of the society and to take a declaration for the dissolution of the society.

Hotels (Licensing and Control) Regulations 1976 (reg. 44) - This regulation allows for a written statement to be made on oath before a Justice of the Peace to be admissible as evidence.

Interpretation Act 1951(s. 3) - Provides a definition of the term Justice of the Peace.

Liquor License Act 1974(s. 51) – This Act provides that a Justice of the Peace can close a licensed premises where a riot or disturbance may occur.

Magistrates Act 1948- (s. 3 (2)) provides that a magistrate by virtue of his office shall be a Justice of the Peace and Justices of the Peace are appointed under the Magistrates Act 1948 section 8(1).

Marriage Act 1944 (s. 32) - This Act provides for a person to swear a declaration before a Justice of the Peace to present to the Registrar General to make a correction to the General Register of marriages.

Motor Car Act 1951 (s. 33 & 36) – A Justice of the Peace may sign a sworn declaration in circumstances where the Board has asked an applicant for a taxi permit or airport limousine to provide information by way of sworn declaration.

Motor Car Insurance (Third-Party Risks) Act 1943 (s. 6 7 10) – A Justice of the Peace may sign written declarations that the insurance certificate has been destroyed in circumstances where the insurance policy has been cancelled.

Pedlars Act 1894(s. 3, 4, 7, 8, 9, 10, 18 & Schedule)– Under this Act a Justice of the Peace has the power to issue pedlars certificates. Once the certificate is issued, the Justice of the Peace should notify the senior Magistrate of the issue of the certificate. A Justice of the Peace can also demand the production of the certificate from any pedlar at any given time.

Post Office Regulations 1933 (s. 68) - This regulation provides that certain public authorities listed, including a Justice of the Peace , may send and receive postal packets free of postage in their official capacity which must be marked OHMS.

Powers of Attorney 1944 (s. 3) – A Justice of the Peace has the Power to swear an affidavit in circumstances where a Power of Attorney has paid out monies pursuant to his power and he did not know that his power had been revoked by death or otherwise.

Promissory Oaths Act 1969 (s.5) – This Act provides for a Justice of the Peace to take an oath of allegiance.

Protection of Justices Act 1897 (s.1, 2, 5, 8, 9&13) – This Act provides protection for a Justice of the Peace from prosecution for doing things in his official capacity.

Provost Marshall General Act 1965(s. 9 & 10) - The Act provides for a writ or process issued by a Justice of the Peace to be addressed to the Provost Marshall for Service and for the copy to be endorsed. It also provides for the fees to be paid for service.

Public Carriage Act 1949 (.s6, &10 Schedule (Modification of Motor Car Insurance (Third Party Risks) Act 1943 as applied to public carriages) – The power to sign a declaration that an insurance certificate has been lost in circumstances where the person insured has lost the certificate and the payment of sums is in issue.

Public Health Act 1949(s.115) —This section provides that a Justice of the Peace may sign a sworn declaration of conscientious objectors within 8 months of the birth of the child of the objector who do not wish for their child to be vaccinated.

Public Order Act 1963 (s. 11) – This Act does not confer any new powers but simply ensures that the Justice of the Peace power to prevent riots is preserved.

Registrations of Births and Deaths Act 1949 (s. 15) – A Justice of the Peace has the power to take a declaration from a person swearing that an error has been made in the register at the Registrar General's office.

St. George's Sewerage Act 1943 (s. 5, 6, 7, 11 & 13) – Where the Corporation needs an easement over a person's land to maintain the sewerage system the Corporation may make an application to a Justice of the Peace to appoint a jury of 5 persons to determine what compensation a person is entitled to for an easement over his land.

Timesharing (Licensing and Control) Regulation 1982 (regulation 6) -These regulations provide that a person can make a written statement on oath before a Justice of the Peace as evidence that premises are being operated as a timesharing scheme without a license.

