



Bill Essentials

The Constitution (Amendment) (Tobago Self-Government) Bill, 2018

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BACKGROUND AND PURPOSE OF THE BILL

1. **The Constitution (Amendment) (Tobago Self-Government) Bill, 2018** (hereinafter “the Bill”) aims to amend **The Constitution of the Republic of Trinidad and Tobago** (hereinafter “the Constitution”) and to repeal **The Tobago House of Assembly Act Chap 25:03**.
2. The Bill was introduced in the House of Representatives by the Prime Minister, The Honourable Dr. Keith Rowley on Friday March 09, 2018.
3. The Bill seeks to make a number of amendments to the Constitution in order to accord self-government to Tobago.
4. Self-government is a system in which the citizens of a country (or smaller political unit, such as a state) rule themselves and control their own affairs by having greater control and law-making authority over a comprehensive range of jurisdictions. Such arrangements are a means of building sound governance and institutional capacity that allow the citizens of a smaller political unit to contribute to, and participate in, the decisions that affect their lives and carry out effective relationships with other governments.
5. Since the Bill seeks to alter the **Constitution**, the Bill shall not be passed by the Parliament unless it is supported by the votes of not less than three-fourths (3/4) of the Members of the House and

not less than two-thirds (2/3) of the Members of the Senate in accordance with **Section 54 (3)** of the **Constitution**.

KEY FEATURES OF THE BILL

The Right to Self-Determination

6. **Clause 4** of the Bill amends the preamble of the **Constitution** to recognize the right to self-determination of the people of both Trinidad and Tobago which includes the right of the people of Tobago to determine their political status and freely pursue their economic, social and cultural development.

Equality of Status

7. **Clause 5** of the Bill will insert a new **Section 1A** into the **Constitution** which will provide for equal status between Trinidad and Tobago. Tobago will no longer carry the designation of a ward.

A Tobago Legislature

8. **Clause 9** of the Bill will amend **Section 53** of the **Constitution** to provide for the establishment of the Tobago Legislature which would consist of the President, a House of Assembly and a People's House and will have to power to make laws for the peace, order and good government of Tobago with respect to all matters except the following, which the Central Government shall have exclusive law making powers:
- The President.
 - The Office of the Prime Minister.
 - The Auditor General.
 - Civil Aviation.
 - Immigration.
 - Foreign Affairs.
 - The Judiciary.
 - Meteorology.
 - National Security (although internal policing shall be under the jurisdiction of the Tobago Government).
 - The Ombudsman.
 - The Integrity Commission.

9. **Clause 11** amends the **Section 75** of the **Constitution** to ensure that these excluded matters fall under the purview of the Cabinet of Trinidad and Tobago.

A Tobago Executive Council, Administrative Matters and the Chief Secretary

10. **Clause 12** will insert three new Sections into the Constitution.
11. **New Section 75A** establishes a Tobago Executive Council which will have the same direction and control of the Tobago Island Government and which will be responsible to the Tobago Legislature.
12. **New Section 75B** provides for the administration of certain services reserved for the Central Government:
- The Section will allow for the Tobago Island Government to act on behalf of the Central Government in execution of its reserved responsibilities, in Tobago and via a memorandum of understanding.
 - The Central Government must take into consideration the views of the Tobago Island Government when delivering services to the public in Tobago.
 - Statutory Authorities and State Enterprises providing services in Tobago must do so in accordance with the policies and programmes of the Tobago Island Government.
13. **New Section 75C** provides for Tobago matters to be aired at Cabinet meetings by the Chief Secretary upon invitation and at mandatory quarterly meetings with the Prime Minister.

The President and the Tobago Island Government

14. **Clause 13** will amend **Section 80** of the **Constitution** to the effect that, when the President exercises his functions under the **Constitution** or any other law, he shall do so in accordance with (unless otherwise stated by the Constitution or any other such law) the advice of not only the Cabinet or Minister acting under the authority of Cabinet, but also the Tobago Executive Council or a Secretary acting under the authority of the Council.
15. **Clause 14** will insert a new **Section 81A** into the **Constitution** which will require that the Chief Secretary keep the President informed concerning matters of the Tobago Island Government and shall furnish upon request by the President, any information related to such matters.

JLSC Membership

16. **Clause 15** amends **Section 110 (2) (b)** of the **Constitution** to provide for the Membership of the Chairman of the Tobago Service Commission to the Judicial and Legal Service Commission.

A Tobago Service Commission

17. **Clause 16** will insert a new **Section 120A** into the **Constitution** to establish a Tobago Service Commission which will consist of a Chairman, a Deputy Chairman and not less than two (2) but no more than four (4) other members.
18. **Clause 17** amends **Section 121 (1)** of the **Constitution** which will ensure the power and jurisdiction of the Tobago Service Commission within Tobago to appoint persons to hold or act in offices, including the power to make appointments on promotion and transfer and to confirm appointments, and remove and exercise disciplinary control over persons holding or acting in such offices and to enforce standards of conduct on such officers.
19. **Clause 17** further amends **Section 121** of the Constitution by inserting the following New Subsections:

New Subsection	Description
(3A)	Requires the Tobago Service Commission to consult the Chief Secretary prior to making any appointment to an office.
(4A)	Stipulates that unless the Chief Secretary gives his approval, no such appointment to office can be made.
(5A)	Specifies that new Subsection (3A) applies only to the offices of Chief Administrator, Administrator, to a Head of Department in a Division, and to a Chief Professional Advisor in a Division.
(6A)	States that the power to make appointments on transfer to the following offices shall vest solely in the Chief Secretary: <ul style="list-style-type: none"> ▪ Any Office of Chief Administrator or Administrator to another office carrying the same salary; and ▪ Offices which have been designated by the Chief Secretary after Consultation with the Tobago Service Commission.

Self-Government of Tobago

20. **Clause 18** of the Bill repeals **Chapter 11A** of the **Constitution** which made provision for the Tobago House of Assembly. The new **Chapter 11A** will make provision for the Self-Government of Tobago by covering the following matters:

New Section	Substance	Details
141A	The Establishment of a Tobago Legislature	<p>The Tobago Legislature will consist of the President, the House of Assembly and the People’s House.</p> <p>Laws shall be made (called ‘Tobago Statutes’) when Bills are passed by the House of Assembly and the People’s House and assented to by the President.</p> <p>Both the House of Assembly and the People’s House may regulate its own procedure and determine their own Standing Orders to do so.</p>
141B – 141T	The House of Assembly	<p>The House of Assembly will consist of fifteen (15) elected Assemblymen, four (4) Councilors and a Presiding Officer.</p> <p>There shall also be:</p> <ul style="list-style-type: none"> ▪ A Deputy Presiding Officer; ▪ A Chief of Secretary elected by the Assemblymen from amongst themselves; ▪ A Deputy Chief Secretary; and ▪ A Minority Leader appointed by the President on the basis that that person commands the support of the largest number of Assemblymen who do not support the Chief Secretary. <p>The remuneration of these persons shall be reviewed by the Salaries Review Commission in accordance with the Constitution.</p> <p>The Chief Secretary must be provided with an Official Residence, Official Vehicles and Appropriate Security Services.</p>

		The term of these Offices expires upon dissolution of the Assembly.
141U – 141AA	The People’s House	<p>The People’s House will consist of thirteen members who shall be elected in the following manner:</p> <ul style="list-style-type: none"> ▪ Seven (7) members must be elected the seven parishes in Tobago, one from each parish. ▪ Six (6) members must be elected each one to represent six sectors namely the Commercial and Business Sector, the Tourism Sector, The Agricultural Sector, The Environmental Sector, The Services Sector and the Legal Sector. <p>From these Members there shall be a Chairman and a Deputy Chairman of the House.</p>
141AB	Dissolution of the Tobago Legislature	Dissolution will occur four (4) years from the date of the first sitting of the Legislature after elections.
141AC	The Tobago Executive Council	<p>The Tobago Executive Council will consist of a Chief Secretary, a Deputy Chief Secretary and a number of other Secretaries appointed in accordance with the advice from the Chief Secretary from among the Members of the House of Assembly.</p> <p>These Secretaries will be assigned responsibility for Divisions within the Tobago Island Government and will exercise general direction and control over those divisions.</p>
141AD	The Fiscal Review Commission	<p>Such a Commission shall be established and shall have certain responsibilities including:</p> <ul style="list-style-type: none"> ▪ Determining and recommending to Parliament the sums to be appropriated to Tobago in each financial year. ▪ Establishing a mechanism for revenue sharing between the Islands of Trinidad and Tobago. ▪ Developing a revenue sharing regime with regard to marine resources.

		<ul style="list-style-type: none"> ▪ Ensuring that all revenues, fees and duties collected in Trinidad that are attributable to Tobago are held for the account of Tobago. ▪ Ensuring the tax compliance of Companies operating in Tobago. ▪ Giving due consideration to the Financial and Developmental Needs of Tobago and allocate financial resources to Tobago as fairly as is practicable.
141AE	Tobago Allocation of Funds	In each Financial Year, the Parliament shall appropriate eight (8) percent of the total sum appropriated by Parliament in that financial year, for the use of the House of Assembly.
141AF	The Tobago Fund	There shall be a Tobago Fund which will consist of monies appropriated by Parliament for the use of the House of Assembly and any other monies that the House of Assembly collects, borrows or is granted.
141AG	Estimates	The Finance Secretary shall submit to the House of Assembly for approval, in each financial year, the draft estimates of revenue and expenditure respecting all functions of the House of Assembly for the next financial year.
141AH	Contingency Fund	A Contingency Fund may be provided for by the House of Assembly and the Finance Secretary shall be responsible for authorizing advances from the Fund but only where he is satisfied that an urgent and unforeseen need for expenditure has arisen.
141AI	Retention of Monies	The House of Assembly will retain monies appropriated by Parliament to the Tobago Fund which remain unexpended at the end of a financial year.
141AJ	Power to Borrow	The Tobago Executive Council will have the power to borrow locally and internationally where it considers such an action to be necessary to discharge its functions, subject to certain qualifications.
141AK	Power to Invest	The Tobago Executive Council will have the power to invest subject to certain qualifications.

141AL	Financial Rules	The Tobago Legislature shall approve Financial Rules which are necessary for its proper financial management.
141AM	Jurisdictional Limit	The powers of the Tobago Legislature and the Tobago Executive Council will have effect only within Tobago.
141AN	Transitional Arrangements	<p>The following arrangements will be made during the transition toward self-government of Tobago after the commencement of the Act:</p> <ul style="list-style-type: none"> ▪ Persons who were members of the Tobago House of Assembly will automatically become members of the Tobago Legislature. ▪ Persons who were under the purview of the Public Service Commission will continue in service under the purview of the Tobago Service Commission. ▪ Matters before the Tobago House of Assembly not disposed of will continue under the Tobago Legislature. ▪ The rules and orders of the Tobago House of Assembly shall apply to the business and proceedings of the Tobago Legislature to the extent that they can <i>mutatis mutandis</i> be applied. ▪ Persons employed by any institution established under the Tobago House of Assembly will continue in such employment. If there are any vacancies in such offices, it shall be filled by a person designated by the persons continuing in office acting in consultation with the Tobago Executive Council. <p>Additionally, executive authority vested in persons before the Act commences will be exercised in accordance with the Tobago House of Assembly Act as if it had not been repealed but only during the period in which such persons remain in office.</p>

COMPARATIVE LEGISLATION

The Australian Capital Territory - The Australian Capital Territory (Self-Government) Act 1988

21. In 1908, the Commonwealth Parliament chose the site for the capital of Australia, and in 1911, the ‘territory for the seat of government’ was established. It was called the Federal Capital Territory until 1938 when it officially became the Australian Capital Territory (“ACT”). The ACT was administered by the federal government until 1989.
22. Before self-government, the Federal Minister for Territories made all the decisions about the ACT. Advisory bodies were set up to inform the minister about matters that affected ACT residents.
23. In the late 1980s the Federal Government decided that the Australian Capital Territory, with a population of 270,000, needed its own system of self-government. The Federal Parliament passed **The Australian Capital Territory (Self-Government) Act, 1988**, along with other related legislation which established self-government in the ACT.

Similarities and Differences

Similarities to the Bill	Differences to the Bill
The Act provides for the establishment of The Legislative Assembly which has the power to “ <i>make laws for the peace, order and good government of the Territory.</i> ”	The Act provides that all courts, judges and persons acting judicially shall take judicial notice of ACT enactments and subordinate laws.
There are matters which are excluded in this power to make laws by the Legislative Assembly: <ul style="list-style-type: none"> ▪ The acquisition of property otherwise than on just terms. ▪ The provision by the Australian Federal Police of police services in relation to the Territory. ▪ The raising or maintaining of any naval, military or air force. ▪ The coining of money. ▪ The classification of materials for the purposes of censorship. 	The Act requires the Executive to publish copies of enactments and subordinate laws and make them available for purchase by the public.

<ul style="list-style-type: none"> ▪ Euthanasia or assisted suicide. ▪ Laws concerning certain medical practices. 	
<p>The Act provides for establishment of an Executive who's responsibility it is to:</p> <ul style="list-style-type: none"> ▪ Govern the Territory with respect to matters specified in 66 matters listed in the fourth schedule. ▪ Execute and maintain enactments and subordinate laws. 	<p>Provision is made for Judicial Matters:</p> <ul style="list-style-type: none"> ▪ The Supreme Court has all original and appellate jurisdiction that is necessary for the administration of justice in the Territory. ▪ ACT laws may give concurrent jurisdiction to the Federal Court of Australia. ▪ A Judicial Commission.
<p>The Act makes provision for financial matters such as:</p> <ul style="list-style-type: none"> ▪ The receipt, spending and control of public money of the Territory. ▪ Borrowing. ▪ Financial relations between the Commonwealth and the ACT. 	<p>The Act contains its own Elections procedure.</p>

Yukon First Nations – Self-Government Act, 1994

24. The road to self-governance has been a long one for the aboriginal peoples of Canada since in 1867 when the **Constitution Act, 1867** gave the federal government jurisdiction over Indians and lands reserved for the Indians.

25. In 1993 however, the newly elected Liberal government committed itself to recognizing the inherent right of self-government and in 1994 **Yukon First Nations Self-Government Act** was enacted.

Similarities and Differences

Similarities to the Bill	Differences to the Bill
<ul style="list-style-type: none"> ▪ The Act confers power to the First Nation to enact laws. 	<p>The Act requires that the First Nation maintain a register of laws, containing the Constitution of the first nation and all laws enacted by the first nation, to which</p>

	members of the public must have reasonable access to during normal business hours.
<p>The power to enact laws is limited. The First Nation has:</p> <ul style="list-style-type: none"> ▪ The ‘exclusive’ power to enact laws in relation to Administration of first nation affairs and operation and internal management of the first nation, Management and administration of rights and benefits, and ancillary matters. ▪ The power to enact laws applicable only to matters listed in Part II of Schedule III of the Act. ▪ The power to enact laws of a local or private nature applicable on the first nation’s settlement land only in relation to the matters enumerated in Part III of Schedule III of the Act. 	The Act makes provision for conflict between the laws of a first nation and the laws of another jurisdiction in Canada.
The Act makes provision for the Funding of the First Nation by the Government of Canada subject to an agreement.	The Act provides that in judicial proceedings, notice may be taken of laws enacted by the first nation.

Scotland- The Scotland Act, 1998

26. The Scottish Parliament and Scottish Government were established in 1999 by **The Scotland Act 1998**. Under the Act a range of powers were devolved¹ to Scotland from the UK’s Parliament including the power to introduce new laws on a wide range of issues known as ‘devolved matters’. Some issues remain the responsibility of the UK Parliament alone however, these are known as reserved matters.

¹ Devolution is a system of government which allows decisions to be made at a more local level:
<http://www.parliament.scot/visitandlearn/Education/18642.aspx>

27. The UK Parliament at Westminster retains power to legislate on any matter, but the convention² of devolution is that the UK Parliament will not normally legislate on devolved matters without the consent of the Scottish Parliament.

Similarities and Differences

Similarities to the Bill	Differences to the Bill
<p>The Scottish Parliament may make laws for Scotland; Bills of the Scottish Parliament become Acts when it has been passed by the Scottish Parliament and has received Royal Assent.</p>	<p>The Act specifies that the UK Parliament still retains its power to make laws for Scotland, nonetheless it further recognizes that “the Parliament of the United Kingdom will not normally legislate with regard to devolved matters without the consent of the Scottish Parliament.” (Section 28 (7) and (8)).</p>
<p>The Act provides for financial matters in Scotland including:</p> <ul style="list-style-type: none"> ▪ The establishment of a Consolidated Fund. ▪ Payments out of the Consolidated Fund. ▪ Borrowing. ▪ Investing. 	<p>The following financial matters are also provided for:</p> <ul style="list-style-type: none"> ▪ The establishment of an Auditor General’s Office for Scotland. ▪ Debt. ▪ Accounts of loans to the Scottish Ministers.
<p>Certain matters are reserved for the UK Parliament including:</p> <ul style="list-style-type: none"> ▪ Certain Constitutional Matters including the continued existence of the High Court of Justiciary as a criminal court of first instance and of appeal and the Union of the Kingdoms of Scotland and England. ▪ The registration and funding of political parties. ▪ Foreign affairs. ▪ The Public service. ▪ Defence. ▪ Treason. ▪ Certain Fiscal and Economic Matters including currency and the fiscal, economic and monetary policy. 	<p>The Act provides for the permanency of the Scottish Parliament and Scottish Government. It specifies that the Scottish Parliament and the Scottish Government “are not to be abolished except on the basis of a decision of the people of Scotland voting in a referendum” (Section 63A (3)).</p>

² Ibid.

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| <ul style="list-style-type: none"> ▪ Home Affairs including data protection and the misuse of drugs. | |
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REFERENCES

Legislation Mentioned in the Bill

- **The Constitution of the Republic of Trinidad and Tobago**
<http://rgd.legalaffairs.gov.tt/laws2/Constitution.pdf>
- **The Tobago House of Assembly Act Chap 25:03**
https://rgd.legalaffairs.gov.tt/laws2/alphabetical_list/lawspdfs/25.03.pdf

Comparative Legislation

- **Australian Capital Territory (Self-Government) Act 1988**
<https://www.legislation.gov.au/Details/C2016C00802>
- **Yukon First Nations Self-Government Act**
<http://laws-lois.justice.gc.ca/PDF/Y-2.6.pdf>
- **The Scotland Act 1998**
<https://www.legislation.gov.uk/ukpga/1998/46/contents>

Other Useful Material

- *“Towards Internal Self-Government for Tobago”* A Green Paper by the Ministry of the Attorney General February 2012.
http://www.ag.gov.tt/Portals/0/Documents/THA_Green_Paper.pdf
- Tobago’s quest for internal self-government- An Article by Latoyaa Roberts Thomas
<http://www.yourcommonwealth.org/social-development/democracy-participation/tobagos-quest-for-internal-self-government/>
- *Establishing self-government in the ACT* an Account by the Legislative Assembly.
<https://www.parliament.act.gov.au/Explore-your-Assembly/resources/fact-sheets/self-government>

- Guidance on the Devolution of powers to Scotland, Wales and Northern Ireland.
<https://www.gov.uk/guidance/devolution-of-powers-to-scotland-wales-and-northern-ireland>
- *Aboriginal Self-Government* by Jill Wherrett (Political and Social Affairs Division) Revised 17 June 1999.
<https://lop.parl.ca/content/lop/researchpublications/962-e.htm>
- *Implementing First Nations Self-Government in Yukon: Lessons for Canada* Gurston Dacks
University of Alberta
<https://nwlc.ca/files/NWLC/resources/Dacksyukonself-government.pdf>



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Kindly note that this information is provided to Members of Parliament in support of their parliamentary duties and is not intended to address the specific circumstances of any particular individual.