

## ABILL

ENTITLED

AN ACT Further to Amend the Constitution of Jamaica in order to provide for the impeachment of Senators and Members of Parliament; and for connected matters.

[ ]

WHEREAS Senators and Members of Parliament are required to be accountable to the people and to serve them with utmost responsibility, integrity, loyalty, and efficiency:

AND WHEREAS a Constitutional Commission established by Parliament, recognizing that it was eminently reasonable and in accord with the principle of accountability that Parliament take disciplinary action

against its members, recommended that there be appropriate provisions in the Constitution for the institution, conduct and sanction of Senators and Members of Parliament by impeachment proceedings:

AND WHEREAS the recommendations of the Constitutional Commission were endorsed, with modification, by a Joint Select Committee of Parliament:

AND WHEREAS it is desirable to implement, with modifications, the said recommendations in order to make Senators and Members of Parliament accountable for certain forms of misconduct while in office:

NOW, THEREFORE, BE IT ENACTED by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Representatives of Jamaica in accordance with the provisions of section 49 of the Constitution of Jamaica, and by the authority of the same, as follows:—

Short title  
and  
construction.

1. This Act may be cited as the Constitution (Amendment) (Impeachment) Act, 2021 and shall be read and construed as one with the Constitution of Jamaica (hereinafter referred to as the "Constitution") and all amendments thereto.

Amendment  
of section  
41 of the  
Constitution.

2. Section 41 of the Constitution is amended by inserting next after subsection (4) the following as subsection (5)—

“(5) If a Senator or Member of Parliament is found guilty of an impeachable offence by the Impeachment Tribunal and the House in which the Senator or Member of Parliament sits resolves that the Senator or Member of Parliament be removed from the House, they shall forthwith cease to exercise any of their functions as a member of that House and their seat in the House shall become vacant.”.

Amendment  
of section  
71 of the  
Constitution.

3. Section 71 of the Constitution is amended—

(a) in subsection (1) of the section,—

(i) by deleting from paragraph (c) the words “subsection (3) or subsection (4) of section 41” and substituting therefor the words “subsection (3), (4) or (5) of section 41”; and

- (ii) in paragraph (d) of subsection (4), by deleting the words “subsection (3) or subsection (4) of section 41” and substituting therefor the words “subsection (3), (4) or (5) of section 41”.

4. Subsection (3) of section 80 of the Constitution is amended in paragraph (d), by deleting the words “subsection (3) or subsection (4) of section 41” and substituting therefor the words “subsection (3), (4) or (5) of section 41”.

Amendment of section 80 of the Constitution.

5. The Constitution is amended by inserting next after CHAPTER VI the following as CHAPTER VIA—

Insertion of New Chapter VIA in Constitution

“

CHAPTER VIA

IMPEACHMENT OF SENATORS AND MEMBER OF THE HOUSE OF REPRESENTATIVES

Interpretation. 96A. In this Chapter—

“complaint” means a complaint which alleges that a Senator or a Member of Parliament has committed an impeachable offence;

“impeachable offence” is misconduct in the form of—

- (a) corruption or misappropriation of public funds or property;
- (b) refusal to exercise, or persistent neglect in the exercise of, the duties or responsibilities of the office held by the Senator or the Member of Parliament impeached;

- (c) abuse of official authority;
- (d) deliberately misleading or intentionally abusing the privileges of, Parliament; or
- (e) egregious conduct or other misbehaviour unbecoming of the holder of the office of Senator or Member of Parliament, which is so serious in nature as to—
  - (i) render the holder of the office unfit to continue to hold that office; or
  - (ii) bring the office held by the person into disrepute;

“Impeachment Committee” means the committee of Parliament constituted by section 96E;

“Impeachment Tribunal” or “Tribunal” means the Tribunal established under section 96I;

“public function” means any activity performed a single time or continually, whether or not payment is received therefor, which is carried out by—

- (a) a person for, or on behalf of or under the direction of a Ministry, Department of Government, a statutory

body or authority, a Municipal Corporation or Municipality or the Council thereof or a Government company;

- (b) a body providing public services;
- (c) a Senator or a Member of Parliament in that capacity;

“request” means a written request to lay, before the Impeachment Committee, a complaint alleging that a Senator or Member of Parliament has committed an impeachable offence.

Impeachment  
of members  
of  
Parliament.

96B. Notwithstanding anything contained in this Constitution, any Senator or Member of Parliament, including the Prime Minister and the Leader of the Opposition, may, in accordance with the provisions of this Chapter, be impeached on a charge alleging that he has committed an impeachable offence.

Request for  
impeachment.

96C.—(1) Any person or persons mentioned in subsection (2) of this section may send or deliver a request to the Clerk to the Houses of Parliament that a Senator or Member of Parliament be impeached on a charge alleging that he has committed an impeachable offence.

(2) The following person or persons may make a request that a Senator or Member of Parliament be impeached—

- (a) three Senators or three Members of Parliament, acting in furtherance of a petition which has been lodged in Parliament and is supported by the

authenticated signatures of at least one thousand electors from the official list of electors compiled pursuant to the Representation of the People Act;

- (b) the Auditor-General;
- (c) the Director of Investigations appointed under the Integrity Commission Act;
- (d) the Director of Public Prosecutions;
- (e) the Director of Elections;
- (f) the Chairman or any member of the Integrity Commission appointed under the Integrity Commission Act;
- (g) the Director of Corruption Prosecution appointed under the Integrity Commission Act;
- (h) the Public Defender;
- (i) the Political Ombudsman; or
- (j) the Chairman of any Commission of Enquiry.

(3) For the purpose of this section a signature on a petition may be authenticated by the certification of a Justice of the Peace that he is satisfied, upon the presentation of the signatory's Electoral Identification Card by the signatory, that the person who has signed the petition is who he represents himself on the petition to be.

Duty of Clerk  
on receipt of  
request.

96D. On receipt of a request under section 96C(1), the Clerk to the Houses of Parliament shall—

- (a) record it and furnish to the person or persons a copy of that record signed by the Clerk to the Houses of Parliament; and
- (b) forward the request to the Impeachment Committee forthwith.

Constitution  
of  
Impeachment  
Committee.

96E.—(1) There shall be a committee of Parliament to be known as the Impeachment Committee.

(2) The Impeachment Committee shall consist of—

- (a) the President of the Senate, who shall, subject to subsection (5) of this section, be the Chairman;
- (b) two members of the House of Representatives appointed by the Prime Minister;
- (c) two members of the House of Representatives appointed by the Leader of the Opposition;
- (d) one member of the Senate appointed by the Prime Minister; and
- (e) one member of the Senate appointed by the Leader of the Opposition.

(3) The Impeachment Committee shall be constituted within thirty days of this Act coming into effect, and thereafter within thirty days of the first sitting of Parliament after any dissolution of Parliament.

(4) When presiding the chairman, shall have an original vote but shall not have a casting vote in any case in which the votes are equal.

(5) If a request is made pursuant to section 96C that the President of the Senate be impeached on a charge alleging that he has committed an impeachable offence, the Deputy President shall be substituted for the President of the Senate as a member and the Chairman of the Impeachment Committee, and if such a request is made in relation to both the President and Deputy President, neither the President nor the Deputy President shall be a member of the Impeachment Committee and the members of the Impeachment Committee shall elect the Chairman from among themselves.

(6) If a request is made pursuant to section 96C that a member of the Senate or House of Representatives, who is also a member of the Impeachment Committee, be impeached on a charge alleging that he has committed an impeachable offence, the member shall forthwith vacate his seat on the Impeachment Committee and his seat shall be filled in the same manner in which he was appointed to the Impeachment Committee in accordance with the provisions of subsection (1) of this section; and the duration of the membership of the person so appointed shall be the unexpired term of the member in relation to whom the request was made.

Functions of  
Impeachment  
Committee.

96F. The Impeachment Committee shall—

- (a) consider complaints made by a person or persons identified in section 96C;
- (b) determine whether a *prima facie* case of the commission of an alleged impeachable offence has been established; and
- (c) carry out any other function specifically provided by this Constitution.

Impeachment  
Committee  
may enquire  
into  
impeachable  
offence.

96G.—(1) A person or the persons mentioned in section 96C(2) who make a request shall attend a meeting of the Impeachment Committee for the purpose of presenting the complaint.

(2) A Senator or a Member of Parliament in relation to whom a complaint has been laid shall be entitled to attend meetings of the Impeachment Committee and to be heard.

(3) Where a complaint has been laid before the Impeachment Committee, the Committee shall consider the complaint and determine, in proceedings open to the public, whether a *prima facie*



case that the Senator or Member of Parliament has committed an impeachable offence has been established.

Articles of  
Impeachment.

96H.—(1) Unless, upon an affirmative vote of the Impeachment Committee by at least five members, the Impeachment Committee is satisfied that no *prima facie* case that the Senator or Member of Parliament has committed an impeachable offence has been established, the Committee shall prepare, or cause to be prepared, Articles of Impeachment containing a Statement, with particulars, of the alleged impeachable offence and deliver the Articles of Impeachment to the Clerk to the Houses of Parliament for transmission to the Impeachment Tribunal.

(2) The Articles of Impeachment shall be addressed to the Senator or Member of Parliament and shall require him to appear before the Impeachment Tribunal at a certain time and place to be determined by the Impeachment Tribunal to answer the charges specified therein.

#### *Impeachment Tribunal*

Establish-  
ment of  
Impeachment  
Tribunal.

96I. For the purpose of this Constitution, there shall be a tribunal to be called the Impeachment Tribunal.

Constitution  
of  
Impeachment  
Tribunal.

96J.—(1) The Impeachment Tribunal shall consist of five members, who shall not be members of either House of Parliament, appointed by the Governor-General, by instrument in writing, as follows—

- (a) one member shall be appointed on the advice of the Prime Minister; and
- (b) one member on the advice of the Leader of the Opposition,

within thirty days of this Act coming into effect, and thereafter within thirty days of the first sitting of Parliament after any dissolution; and and

- (c) subject to subsection (2) of this section, three members shall be appointed after consultation with the members appointed under paragraphs (a) and (b) within thirty days after the dates of the appointments of the members appointed under paragraphs (a) and (b).

(2) Two of the members of the Tribunal appointed under paragraph (c) of subsection (1) of this section shall be from among persons who are qualified to hold or have held the office as a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from any such court but who shall not, at the time of appointment, be serving as a Judge of such a court.

(3) The Impeachment Tribunal shall forthwith elect a chairman of the Tribunal from among the three members appointed pursuant to paragraph (c) of subsection (1) of this section and inform the Governor-General accordingly.

(4) The seat of a member of the Tribunal shall become vacant—

- (a) upon the dissolution of Parliament;
- (b) if he resigns his seat; or
- (c) if his appointment is revoked by the Governor-General in the manner hereinafter provided—
  - (i) on the advice of the Prime Minister, if the appointment was

made by the Governor-General on the advice of the Prime Minister;

- (ii) on the advice of the Leader of the Opposition, if the appointment was made by the Governor-General on the advice of the Leader of the Opposition; and
- (iii) if the appointment was made under paragraph (c) of subsection of this section in the manner therein provided, the Governor-General shall not exercise his power to revoke the appointment of that member without first consulting the persons appointed under paragraphs (a) and (b) of subsection (1) of this section.

(5) Subject to subsection (6) of this section, whenever the seat of any member of the Tribunal becomes vacant, other than through dissolution, another person shall, within fourteen days, be appointed in the manner provided in this section to fill the vacancy as a member of the Tribunal.

(6) In any case where the member of the Tribunal whose seat has become vacant—

- (a) was appointed by the Governor-General on the advice of the Prime Minister, then the Governor-General shall make the appointment under subsection (5) of this section on the advice of the Prime Minister;

- (b) was appointed by the Governor-General, on the advice of the Leader of the Opposition, then the Governor-General shall make the appointment under subsection (5) of this section on the advice of the Leader of the Opposition; or
- (c) was appointed by the Governor-General in exercise of the power of appointment under paragraph (c) of subsection (1) of this section, then the Governor-General shall make the appointment under subsection (5) of this section after consultation with the persons specified in paragraphs (a) and (b) of subsection (1) of this section.

(7) If the office of a member of the Impeachment Tribunal becomes vacant, any other person who is qualified to be a member of the Tribunal may be appointed to be a member of the Tribunal and the duration of the term of office of such member shall be the unexpired period of the term of office of the member whose office became vacant.

(8) Notwithstanding subsection (4) of this section, where Parliament is dissolved and the Tribunal appointed prior to dissolution has begun any impeachment hearing, the Tribunal shall continue the process of completing that impeachment hearing.

Jurisdiction  
of Impeach-  
ment  
Tribunal.

96K. The Impeachment Tribunal shall—

- (a) receive Articles of Impeachment from the Clerk to the Houses of Parliament;
- (b) hear and determine, in proceedings open to the public, whether the Senator or

Member of Parliament to whom the Articles of Impeachment relate has committed an impeachable offence; and

- (c) have such powers and duties as may be conferred or imposed upon it by or under this Constitution or any other law.

Procedure of  
Impeach-  
ment  
Tribunal.

96L.—(1) The provisions of the Commissions of Enquiry Act as in force immediately before the coming into force of the Constitution (Amendment) (Impeachment) Act, 2021 shall, subject to the provisions of this section, apply as nearly as may be in relation to an Impeachment Tribunal appointed under section 96J or, as the context may require, to the members thereof as they apply in relation to Commissions and Commissioners appointed under that Act, and for that purpose shall have effect as if they formed part of this Constitution.

(2) In exercising its jurisdiction, the Impeachment Tribunal shall—

- (a) apply the rules of evidence and standard of proof applicable in a court exercising jurisdiction over persons charged with criminal offences;
- (b) ensure that the proceedings before the Tribunal are open to the public;
- (c) accord the same privileges as in a court of law to—
  - (i) the person against whom an allegation of having committed an impeachable offence has been made; and
  - (ii) the witnesses at the hearing.

(3) The Tribunal has, with respect to the attendance, swearing and examination of witnesses, the production and inspection of documents and other evidentiary material, the enforcement of its orders and other matters necessary or proper for the due exercise of its jurisdiction, all such powers, rights and privileges as are vested in a superior court of record.

Tribunal  
may  
recommend  
penalties.

96M.—(1) Where at least three members of the Impeachment Tribunal find that a Senator or Member of Parliament against whom a complaint has been made is guilty of an impeachable offence, the Tribunal may recommend to the House in which the Senator or Member of Parliament sits any one or more of the following penalties—

- (a) the censure of the Senator or Member of Parliament;
- (b) the removal of the member from the House or from office, or both, as the case may be; and the removal of the Senator or Member of Parliament from that House;
- (c) the disqualification of the Senator or Member of Parliament from holding any public office he then currently holds or any other office, the holder of which performs a public function, for a specified period or indefinitely.

(2) The Impeachment Tribunal shall submit its findings to the House in which the person sits within sixty days from such referral, together with a resolution setting out the recommended penalty.

(3) The resolution shall be tabled for consideration by the House in which the person sits as soon as is reasonably possible.

(4) The House in which the person sits shall, by a resolution which has received the affirmative vote of a majority of all the members thereof, either affirm, modify or dismiss the recommendations of the Impeachment Tribunal.

(5) The vote of each member of the House in which the person sits shall be recorded.

Rights of member against whom request made.

96N.—(1) Every Senator or Member of Parliament against whom a complaint has been made, shall be entitled to—

- (a) defend himself in person or through legal representation of his own choosing; or
- (b) if he has not sufficient means to pay for legal representation, to be given such assistance as is required in the interests of justice.

(2) Whenever any person is charged with an impeachable offence he shall, unless the charge is withdrawn, be afforded a fair hearing by the Impeachment Tribunal.

96O.—(1) It shall not be a defence to any person charged with a criminal offence in relation to an impeachable offence (whether or not he has been found guilty by the Tribunal of having committed an impeachable offence) that he has had legal proceedings taken against him by the Impeachment Tribunal for actions that have given rise to the impeachable offence for which he is to be subject to legal proceedings in a court of law.

Limitation on availability of defence.

(2) The Impeachment Tribunal shall not be considered to be a “competent court” for the purposes of section 16(9) of this Constitution.”.

## MEMORANDUM OF OBJECTS AND REASONS

Recommendations made in the August 1993, Report of the Constitutional Commission of Jamaica and the May 1995, Final Report of the Joint Select Committee of the Houses of Parliament on Constitutional and Electoral Reform, emphasized the need for certain public officers to be impeached.

A decision was taken to amend the Constitution of Jamaica in order to include provisions as to—

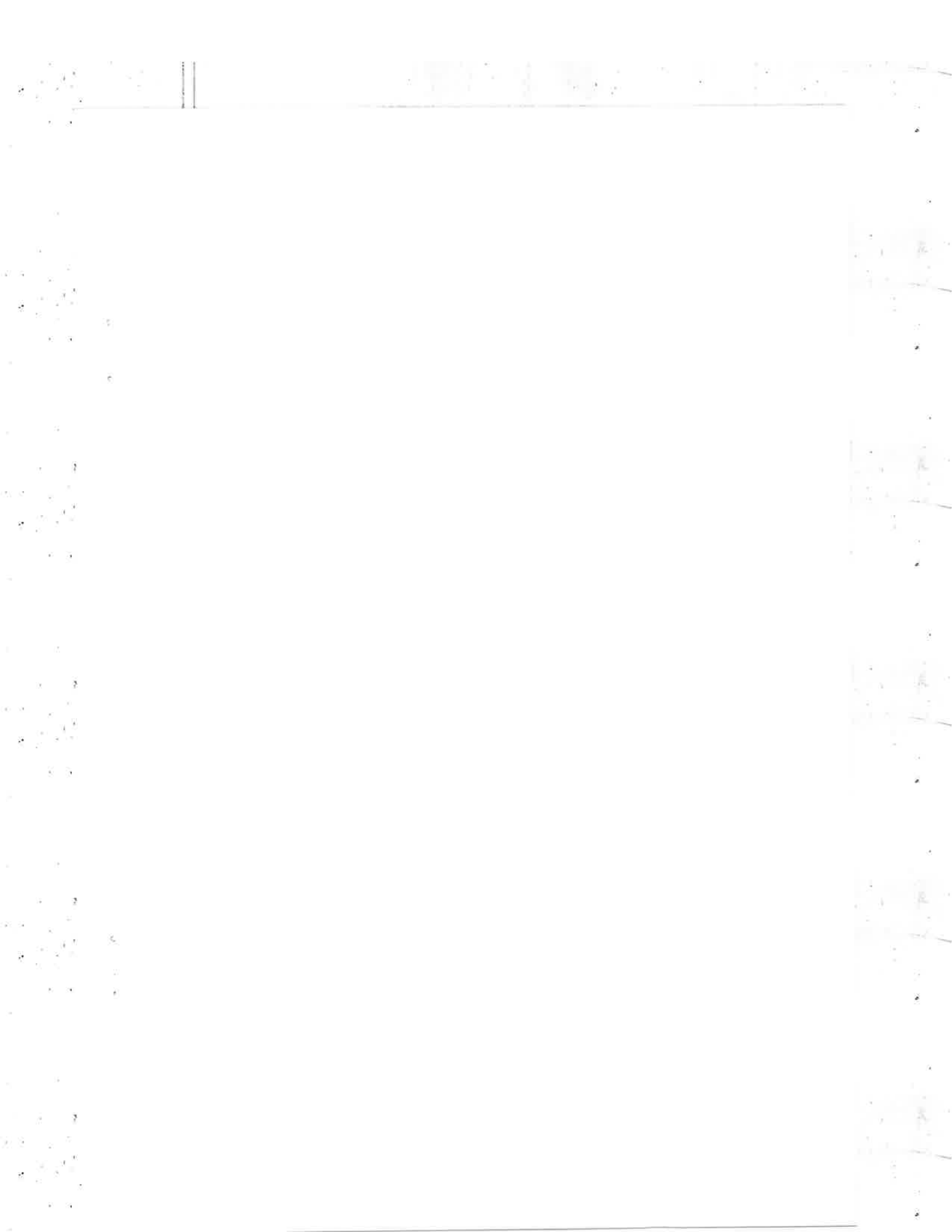
- (a) the list of persons to be amenable to the impeachment process being the Prime Minister, the Leader of the Opposition, and the other parliamentarians;
- (b) a definition of impeachable offences;
- (c) the persons who may make a request for a person amenable to the impeachment process to be investigated;
- (d) the constitution and appointment of an Impeachment Committee to receive requests and, unless satisfied that no *prima facie* case of the commission of an impeachable offence has been established, to prepare formal charges in the form of Articles of Impeachment for referral to the Impeachment Tribunal;
- (e) the establishment of an Impeachment Tribunal;
- (f) the conduct of impeachment proceedings before the Impeachment Tribunal, and the sanctions which may be imposed on conviction of an impeachable offence.

The Bill, therefore, seeks to emphasize the serious nature of impeachable offences and the importance of making parliamentarians accountable for certain misconduct.

The Bill is based on a Bill that was drafted in 2011 but was not debated in Parliament, and the list of impeachable offences has been expanded to afford wider coverage of conduct that is unbecoming the holder of high public office.

MARK GOLDING, MP  
Member of Parliament for St. Andrew Southern  
and Leader of the Opposition





# ABILL

## ENTITLED

AN ACT Further to Amend the  
Constitution of Jamaica in order to  
provide for the impeachment of  
Senators and Members of  
Parliament; and for connected  
matters.

---

As introduced by the Honourable Member of  
Parliament for St. Andrew Southern and Leader of  
the Opposition

---

---

PRINTED BY JAMAICA PRINTING SERVICES (1992) LTD.,  
(GOVERNMENT PRINTERS), DUKE STREET, KINGSTON, JAMAICA.

---