

D.R. 15/2022
CONSTITUTION (AMENDMENT) (NO. 3) BILL 2022
AMENDMENT IN COMMITTEE

ENGLISH LANGUAGE TEXT

1. Clause 1

Clause 1 of the Bill is amended by inserting after subclause (2) the following subclause:

“(3) Notwithstanding subsection (2), section 6 of this Act comes into operation in a State on such date as the Yang di-Pertuan Agong may, with the consent of the Ruler or the Yang di-Pertua Negeri, as the case may be, appoint by notification in the *Gazette*.”.

2. Clause 2

Clause 2 of the Bill is amended by substituting for paragraph (b) the following paragraph:

“(b) by inserting after Clause (3) the following Clause:

“(3A) Notwithstanding paragraph (c) of Clause (2) and Clause (3), the right to form associations conferred by paragraph (c) of Clause (1) in relation to a member of the House of Representatives and Legislative Assembly of any State shall be subjected to restrictions imposed by Article 49A and section 7A of the Eighth Schedule respectively.”.

3. New clauses 3, 4, 5 and 6

The Bill is amended by inserting after clause 2 the following clauses:

“Amendment of Article 48

3. The Federal Constitution is amended in Article 48, by deleting Clause (6).

New Article 49A

4. The Federal Constitution is amended by inserting after Article 49 the following Article:

“Change of a member’s political party, etc.

49A. (1) Subject to the provisions of this Article, a member of the House of Representatives shall cease to be a member of that House and his seat shall become vacant immediately on a date a casual vacancy is established by the Speaker under Clause (3) if—

(a) having been elected to the House of Representatives as a member of a political party—

(i) he resigns as a member of the political party; or

(ii) he ceases to be a member of the political party; or

(b) having been elected to the House of Representatives otherwise than as a member of a political party, he joins a political party as a member.

(2) A member of the House of Representatives shall not cease to be a member of that House pursuant to this Article only by reason of—

(a) the dissolution or cancellation of the registration of his political party;

(b) his resignation from the membership of his political party upon election as a Speaker; or

(c) the expulsion of his membership of his political party.

(3) Whenever the Speaker receives a written notice from any member of the House of Representatives on the occurrence of a casual vacancy among the members of the House of Representatives under this Article, the Speaker shall establish that there is such a casual vacancy and notify the Election Commission accordingly within twenty one days from the date he received the written notice.

(4) For the purposes of holding election under Article 54, such casual vacancy shall be filled within sixty days from the date the Election Commission receives the notification from the Speaker.”.

Amendment of Article 160

5. Article 160 of the Federal Constitution is amended in Clause (2) by inserting after the definition of “pension rights” the following definition:

“political party” means—

(a) any society which by any of its objects or rules, regardless whether such object or rule is its principal object or rule, or constitutes

merely an object or rule which is ancillary to its principal object or objects or to its principal rule or rules, makes provision for the society to participate, through its candidates, in elections to the House of Representatives, or to a State Legislative Assembly; or

(b) any society which, notwithstanding anything contained in its objects or rules, carries on any activity or pursues any objective which involves its participation, through its candidates, in elections to the House of Representatives, or to a State Legislative Assembly,

and includes a coalition of such societies which has been registered under any federal laws;’.

Amendment of Eighth Schedule

6. The Eighth Schedule to the Federal Constitution is amended—

(a) by deleting subsection (5) of section 6; and

(b) by inserting after section 7 the following section:

“Change of a member’s political party etc.

7A. (1) Subject to the provisions of this section, a member of the Legislative Assembly shall cease to be a member of that Legislative Assembly and his seat shall become vacant immediately on a date a casual vacancy is established by the Speaker under subsection (3) if—

(a) having been elected to the Legislative Assembly as a member of a political party—

(i) he resigns as a member of the political party;
or

(ii) he ceases to be a member of the political party;

(b) having been elected to the Legislative Assembly otherwise than as a member of a political party, he joins a political party as a member.

(2) A member of the Legislative Assembly shall not cease to be a member of that Legislative Assembly pursuant to this section only by reason of—

(a) the dissolution or cancellation of the registration of his political party;

(b) his resignation from the membership of his political party upon election as a Speaker; or

(c) the expulsion of his membership of his political party.

(3) Whenever the Speaker receives a written notice from any member of the Legislative Assembly on the occurrence of a casual vacancy among the members of the Legislative Assembly under this section, the Speaker shall establish that there is such a vacancy and notify the Election Commission accordingly within twenty one days from the date he received the written notice.

(4) For the purposes of holding an election under subsection (5) of section 9, such casual vacancy shall be filled within sixty days from the date the Election Commission receives the notification from the Speaker.”.

4. **Amendment of Financial Implications**

The Bill is amended by substituting for the financial implications the following financial implications:

“This Bill will involve the Government in extra financial expenditure the amount of which cannot at present be ascertained.”.

EXPLANATORY STATEMENT

1. Paragraph 1 seeks to insert the power of the Yang di-Pertuan Agong to appoint the date for the coming into operation of the proposed Act with respect to clause 6, that is, the Yang di-Pertuan Agong may, with the consent of the Ruler or the Yang di-Pertua Negeri of a State, appoint a date for the coming into operation of the said clause in that State.
2. Paragraph 2 seeks to substitute paragraph (b) of the Bill to insert a new Clause (3A) of Article 10 to enable restrictions on the right to form associations in relation to a member of the House of Representatives and Legislative Assembly of any State to be imposed by Article 49A and section 7A of the Eighth Schedule respectively.
3. Paragraph 3 seeks to introduce new clauses 3, 4, 5 and 6 into the Bill.

New clause 3 seeks to delete Clause (6) of Article 48. This deletion will enable any member of the House of Representatives who resigns to seek re-election at any

time after he resigns his membership as a member of the House of Representatives and accordingly the five years disqualification period of being a member of the House of Representatives is no longer applicable.

New clause 4 seeks to introduce a new Article 49A into the Federal Constitution to provide that a member of the House of Representatives shall cease to be a member of that House and his seat shall become vacant immediately on a date a casual vacancy is established by the Speaker under Clause (3) of the new Article 49A if having been elected to the House of Representatives as a member of a political party, he resigns or ceases to be a member of that political party. The same shall also apply to an independent candidate who, having been elected to the House of Representatives, joins a political party. The words "member of a political party" referred to in the new Article 49A shall include a member of the House of Representatives who is not a member of any political party that forms a coalition of political parties but is a member of that coalition.

ILLUSTRATION

A member of Party A who is a member of the House of Representatives shall not cease to be a member of that House if Party A, which is a member of a coalition of political parties, leaves that coalition whether or not Party A joins another coalition of political parties or forms a new coalition of political parties.

The new Article 49A also provides for circumstances where a member of the House of Representatives shall not cease to be a member of that House.

ILLUSTRATIONS

- (a) Party A merges with Party B to become Party C where by such merger both Party A and Party B are either dissolved or their political party's registrations

are cancelled. The members of Party A and Party B shall not cease to be members of the House of Representatives.

- (b) Party A is dissolved or its political party's registration is cancelled and the members of Party A become members of Party B, then the members of Party A shall not cease to be members of the House of Representatives.
- (c) A member of Party A who is expelled from the party, whether or not he joins another political party or forms a new political party, shall not cease to be a member of the House of Representatives.

A casual vacancy of the House of Representatives shall be established by the Speaker upon receiving a written notice from any member of that House on the occurrence of such vacancy and he shall notify the Election Commission of such vacancy within twenty one days from the date he received such written notice. For the purposes of Article 54 of the Federal Constitution, the Election Commission shall hold an election within sixty days from the date the Election Commission receives the notification from the Speaker.

ILLUSTRATIONS

- (a) On 2 February 2022, the Speaker of the House of Representatives received a written notice from A, a member of the House of Representatives, informing that B, another member of the House of Representatives, has resigned as a member of his political party on 1 January 2022. Thereafter, the Speaker must establish whether there is a casual vacancy and notify the Election Commission of such casual vacancy within twenty one days from 2 February 2022, that is, on or before 23 February 2022.
- (b) On 20 February 2022, the Election Commission received a written notification from the Speaker of the House of Representatives informing that there is a casual vacancy of a member of the House of Representatives. Hence, the

Election Commission shall hold an election to fill such casual vacancy within sixty days from 20 February 2022, that is on or before 21 April 2022.

New clause 5 seeks to introduce the definition of “political party” into Clause (2) of Article 160 of the Federal Constitution.

New clause 6 seeks to introduce a new section 7A into the Eighth Schedule to the Federal Constitution to provide that a member of a Legislative Assembly shall cease to be a member of that Legislative Assembly and his seat shall become vacant immediately on a date a casual vacancy is established by the Speaker under subsection (3) of the new section 7A if having been elected to the Legislative Assembly as a member of a political party, he resigns or ceases to be a member of that political party. The same shall also apply to an independent candidate who, having been elected to the Legislative Assembly, joins a political party. The words “member of a political party” referred to in the new section 7A shall include a member of the Legislative Assembly who is not a member of any political party that forms a coalition of political parties but is a member of that coalition.

The new section 7A also provides for circumstances where a member of the Legislative Assembly shall not cease to be a member of that Assembly.

A casual vacancy of the Legislative Assembly shall be established by the Speaker upon receiving a written notice from any member of that Legislative Assembly on the occurrence of such vacancy and he shall notify the Election Commission of such vacancy within twenty one days from the date he received such written notice. For the purposes of subsection (5) of section 9 of the Eighth Schedule to the Federal Constitution, the Election Commission shall hold an election within sixty days from the date the Election Commission receives the notification from the Speaker.

4. Paragraph 4 seeks to substitute the financial implications of the Bill as the introduction of the new Article 49A and the amendment of Eighth Schedule to the Federal Constitution will involve the Government in extra financial expenditure for election purposes by the Election Commission to fill the casual vacancy of members of the House of Representatives or Legislative Assembly in any State.