

CAYMAN ISLANDS



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**THE REFERENDUM (SINGLE-MEMBER CONSTITUENCIES) LAW,
2012**

(LAW 4 OF 2012)

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2012**

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CAYMAN ISLANDS

Law 4 of 2012.

I Assent

Franz Manderson

Acting Governor.

14th May, 2012

**A LAW TO MAKE PROVISION FOR THE HOLDING OF A
REFERENDUM ON THE PROPOSAL TO INTRODUCE AN
ELECTORAL SYSTEM OF SINGLE-MEMBER CONSTITUENCIES
WITH EACH ELECTOR BEING ENTITLED TO CAST ONLY ONE
VOTE; AND TO MAKE PROVISION FOR INCIDENTAL AND
CONNECTED MATTERS**

WHEREAS section 69 of the Constitution of the Cayman Islands provides that a law enacted by the Legislature may make provision to hold a referendum amongst persons registered as electors in accordance with section 90 of the Constitution, on a matter or matters of national importance, when so resolved by the majority of the elected members of the Assembly;

AND WHEREAS a resolution has been adopted by a majority of the elected members of the Legislative Assembly, declaring the matter specified in section 4(1) of this Law to be a matter of national importance:

NOW, THEREFORE, it is DECLARED that the matter specified in section 4(1) of this Law is a matter of national importance and ENACTED by the Legislature of the Cayman Islands.

1. This Law may be cited as the Referendum (Single-member Constituencies) Law, 2012. Short title

Interpretation	2. (1) In this Law -
U.K. S.I. 2009/1379	“Constitution” means the Constitution set out in Schedule 2 to the Cayman Islands Constitution Order 2009;
(2009 Revision)	“Elections Law” means the Elections Law (2009 Revision) and includes the Elections Rules (2009 Revision);
	“Governor” means the person for the time being holding the office of Governor of the Islands, and includes any person for the time being lawfully performing the functions of that office under the Constitution of the Cayman Islands;
	“Governor in Cabinet” means the Governor acting in accordance with the advice of the Cabinet of the Islands;
	“observer” means a person appointed in accordance with section 7(1) and includes a scrutineer;
	“polling station” means the place appointed by notice for the holding of the referendum in an electoral district;
	“referendum” means the referendum to be held under this Law;
	“scrutineer” means a person appointed in accordance with section 7(2); and
	“voter” means any person who votes or is entitled to vote at the referendum.
	(2) For the purposes of this Law, the expressions “Deputy Supervisor”, “election”, “elector”, “electoral district”, “presiding officer”, “returning officer” and “Supervisor” have the same meanings, respectively, as in the Elections Law.
Holding of referendum	3. (1) A referendum shall be held about whether there should be an electoral system of single-member constituencies with each elector being entitled to cast only one vote.
	(2) The Governor in Cabinet shall by notice, published in the Gazette, appoint a day for the holding of the referendum, being a day not earlier than the thirtieth day next following the date on which that notice is first so published.

Matter of national importance and referendum question

4. (1) The matter of national importance is whether there should be an electoral system of single-member constituencies with each elector being entitled to cast only one vote.

(2) For the purpose of determining the matter of national importance specified in subsection (1), the following question shall be asked in the referendum -

“Do you support an electoral system of single-member constituencies with each elector being entitled to cast only one vote?”.

(3) The ballot paper to be used for the purpose of the referendum shall be in the form set out in Schedule 1.

Schedule 1

(4) The question specified in subsection (2) will not have been answered in favour of single-member constituencies with each elector being entitled to cast only one vote, unless more than fifty per centum of persons registered as electors in accordance with section 90 of the Constitution, vote in the referendum in favour of the question.

(5) The outcome of the referendum shall be binding on the Government if more than fifty per centum of persons registered as electors in accordance with section 90 of the Constitution, vote in the referendum in favour of, or against, the question specified in subsection (2).

5. The persons entitled to vote in the referendum are those who, on the day of the holding of the referendum, would be entitled to vote as electors at an election in an electoral district.

Entitlement to vote

6. (1) The functions which, in relation to an election, are conferred on the Supervisor or a Deputy Supervisor by any provision of the Elections Law shall, in relation to the referendum, be discharged by those officers respectively.

Conduct of referendum

(2) The Supervisor shall, in addition to the functions conferred upon him by subsection (1), be responsible, together with the returning officers, for conducting the count of votes cast in the referendum and for certifying the total of the ballot papers and the respective answers relating to the referendum.

(3) The Governor shall in writing appoint such persons as may be necessary -

(a) as returning officers for the purpose of conducting the referendum in an electoral district; and

(b) to assist the Supervisor in conducting the count of votes cast in the referendum.

(4) Subject to subsection (5), the functions which in relation to an election are conferred respectively on returning officers, presiding officers, poll clerks, field officers and logistics officers by any provision of the Elections Law shall, in relation to the referendum, be discharged by those officers respectively.

(5) The returning officers shall assist the Supervisor in conducting the count of votes cast in the referendum, and certifying the total of the ballot papers and the respective answers relating to the referendum.

Observers

7. (1) The Governor may, by instrument in writing, appoint persons to observe the conduct of the referendum, the verification of the ballot paper accounts and the counting of the votes.

(2) The Premier and the Leader of the Opposition may each, by instrument in writing, appoint in respect of each polling station and each counting station, two persons to observe the conduct of the referendum, the verification of the ballot paper accounts and the counting of the votes.

Legal challenge

8. (1) No court shall entertain any proceedings for questioning the number of ballot papers or votes cast in the referendum as certified by the Supervisor based on returns as certified by the returning officers, unless the proceedings are brought in accordance with this section.

(2) The proceedings shall be brought by a claim for judicial review, filed in the Grand Court before the end of the permitted period.

(3) In subsection (2), the “permitted period” means the period of six weeks starting with -

- (a) the date on which a certificate as to the matters mentioned in subsection (1) is given by the Supervisor; or
- (b) if there is more than one such certificate, the date on which the last such certificate is given.

Application of Elections Law

9. (1) For the purposes of the referendum, the votes of the persons voting shall be cast, and the proceedings shall be conducted, so far as may be as if the referendum were an election of members to the Legislative Assembly; and the Elections Law (2009 Revision) and any rules in force under that Law shall for those purposes be construed accordingly, but any reference to a candidate, nomination, agent, election agent, polling agent or counting agent shall, unless the context otherwise requires, be disregarded.

(2) Without prejudice to subsection (1), the provisions of the Elections Law (2009 Revision) and the Elections Rules (2009 Revision) specified in column 1 of Schedule 2 shall apply in connection with the referendum, subject to the modifications or exceptions specified in relation to those provisions in column 2 of that Schedule. Schedule 2

(3) Unless the contrary intention appears, in this Law and in the provisions applied by this Law -

- (a) any reference to an election or poll shall be construed as a reference to the referendum;
- (b) any reference to an electoral district shall be construed as a reference to the area for which the relevant returning officer acts;
- (c) any reference to polling day shall be construed as a reference to the day fixed for holding the referendum; and
- (d) any reference to a ballot paper shall be construed as a reference to the ballot paper to be used for the purpose of the referendum.

(4) The Governor in Cabinet may by order amend Schedule 2.

10. All expenses properly incurred by, and all remuneration and travelling allowances payable to, officers under this Law shall be defrayed out of the general revenue of the Islands. Expenses of referendum

11. The Governor in Cabinet may by regulations - Regulations

- (a) make such provision as to the conduct of the referendum as may appear to him to be necessary or expedient; and
- (b) make such other provision, in relation to any other matter, as may appear to him to be necessary or expedient for the purpose of giving due effect to this Law.

SCHEDULE 1

(Section 4(3))

FORM OF BALLOT PAPER

BALLOT PAPER

NO. _____

REFERENDUM _____

Consecutive number given voter in poll book _____

(Counterfoil)

BALLOT PAPER

Polling day _____

No. _____ Initial of presiding officer

The Referendum Question is:

“Do you support an electoral system of single-member constituencies with each elector being entitled to cast only one vote?”.

YES
NO

SCHEDULE 2

(Section 9(2))

PART 1

**APPLICATION AND MODIFICATION OF PROVISIONS OF THE
ELECTIONS LAW (2009 REVISION)**

**Provision applied
and subject matter**

Modification

section 2
(Definitions and
interpretation)

In subsection (1), before the definition of the word “writ”,
insert the following definition -

“ “voter” means a person who votes or is entitled to vote at
the referendum having been so duly qualified pursuant to
the Elections Law (2009 Revision);”.

section 20 (Electors registration cards)	Omit.
PART III (Registration of Political Parties)	Omit.
section 28 (Issue of writs for holding elections)	<p>Omit and substitute -</p> <p>“28. (1) On the issue of the notice of the referendum under section 3(2) of the Referendum (Single-member Constituencies) Law, 2012, the Supervisor shall by notice published in the Gazette appoint the polling stations for the holding of the referendum in an electoral district.</p> <p>(2) The places appointed for the holding of a referendum in an electoral district shall each be some convenient building or part of a building within, or in the opinion of the Supervisor conveniently near, the boundary of the electoral district concerned, not being a building licensed for the sale of intoxicating liquor.”.</p>
section 29 (Nominations)	<p>Omit and substitute -</p> <p>“29. (1) The Supervisor shall -</p> <ul style="list-style-type: none">(a) establish counting stations for counting the votes cast in the referendum; and(b) give notice of the holding of the referendum, specifying in the notice -<ul style="list-style-type: none">(i) the date and time for the holding of the referendum;(ii) the locations of the polling stations in an electoral district;(iii) the location of the counting station; and(iv) the date and time when the number of votes cast in the referendum shall be counted. <p>(2) A notice under subsection (1)(b) shall be published in the Gazette and in at least one newspaper circulating in the Islands.”.</p>

section 30 (Offences in respect of nomination papers)	Omit.
section 31 (Withdrawal or death of candidate)	Omit.
section 32 (Deposits)	Omit.
section 33 (When deposit forfeited or returned)	Omit.
section 34 (Contested elections, publication of date and place, etc.)	Omit.
section 35 (Polling stations)	In subsection (1) omit the words “section 34(2) for the taking of the poll” and substitute the words “section 29(1)(b)(i) for the holding of the referendum”.
section 36 (Presiding officers)	In subsection (1) omit the words “by or on behalf of a candidate in or about the election” and substitute the words “, in or about the referendum, by a political party”.
section 40 (Polling and counting agent)	Omit and substitute - “40. An observer, on being admitted to a polling station, shall take an oath in Form 25 to keep secret the manner in which any of the voters has marked his ballot paper in his presence.”.
section 41 (Taking of poll and the ballot)	Omit subsection (2) and substitute - “ (2) The ballot of each voter shall be a printed paper in the form set out in Schedule 1 to the Referendum (Single-member Constituencies) Law, 2012 and each ballot paper shall have a serial number printed on the back and shall have attached to it a counterfoil with the same serial number printed on the face and there shall be a line of

	perforations between the ballot paper and the counterfoil.”.
section 44 (Restriction on voting)	Omit.
section 45 (Proceedings at poll)	In subsection (1) omit the words “candidates, their agents,” and substitute the word “observers”. In subsection (4) omit the words “agent of a candidate” and substitute the word “observer”.
section 46 (Who are to be admitted within polling stations)	In subsection (2) omit the words “agents aforesaid” and substitute the word “observers”.
section 47 (General mode of taking ballot)	In subsection (3) omit the words “within the space to the right of the name of the candidate or each candidate for whom” and substitute the words “in the space to the right of the answer for which”.
section 48 (Questions which may be put to elector)	In subsection (1) omit the words “a candidate or his agent” and substitute the words “an observer”.
section 49 (Mode of taking ballot in special cases)	Omit subsection (2)(c) and substitute - “(c) any objections made by an observer.”.
section 55 (Who may vote)	In subsection (2) omit the words “, one of the candidates or an agent of a candidate” and substitute the words “or an observer”.
section 56 (Who may be present)	Omit and substitute - “56. The following persons shall be permitted to remain in the polling station during the time the poll remains open - (a) the presiding officer; (b) the poll clerk; (c) the Supervisor; (d) the Deputy Supervisors; (e) the returning officer of the electoral district; (f) the observers;

- (g) the constables in uniform on duty; and
- (h) such field officers, logistics officers, emergency personnel and other persons as may be authorised in writing by the Supervisor.”.

section 57
(Proceedings at the
close of the poll)

In subsection (2) omit the words “candidate or agent” and substitute the word “observers”.

Omit subsection (3).

"section 58
(The count)

Omit subsections (1) and (2) and substitute -

“ (1) Each returning officer, or deputy returning officer, as the case may be, shall, upon receipt by him of each of the ballot boxes place his seal thereon in the presence of the observers, and shall then take every precaution for its safekeeping until the count commences.

(1A) After the ballot boxes have been received by the returning officer for the count, he shall break the seals thereon in the presence of observers and of any other persons who are lawfully in the counting station at that time and place all the ballot papers therein contained in the appropriate ballot box which shall be provided.

(2) When all the ballot boxes from an electoral district have been received by the returning officer and dealt with in accordance with subsection (1A), and not before, the returning officer shall, in the presence of such of the observers as are present, or, if no observers are present, two voters -

- (a) record and count, in such segments as the returning officer may deem appropriate, the number of votes for the electoral district (allowing the observers or, in the absence of the observers, the two voters present, full opportunity to see such votes but not the official number on the back of the ballot paper) and a poll clerk and not less than two witnesses shall be supplied with tally sheets upon which they may keep their own scores as each vote is called out by the

- returning officer; and
- (b) reject all ballot papers -
 - (i) which have not been marked; or
 - (ii) upon which there is any writing or mark by which the voter could be identified, but no ballot paper shall be rejected on account of any writing, number or mark placed thereon by any presiding officer.”.

Omit subsections (7) to (13) (inclusive) and substitute -

“ (7) If, in the course of counting the votes, the returning officer discovers that the presiding officer has omitted to affix his initials to any ballot paper as provided by section 47(1), he shall, in the presence of the poll clerk and such of the observers as are present, affix his initials to such ballot paper and shall count such ballot paper as if it had been initialled by the presiding officer in the first place, provided that he is satisfied that the ballot paper is one that has been supplied by the presiding officer, and also that every ballot paper supplied to such presiding officer has been accounted for as provided by paragraph (f) of section 57(1).

- (8) Where a vote is marked -
 - (a) otherwise than in the proper place;
 - (b) otherwise than by way of an X; or
 - (c) by more than one mark,

the vote is valid if it clearly appears that it was intended for a particular answer, and that answer shall be awarded the vote accordingly.

(9) The returning officer shall keep a record, on the special form printed in the poll book, of every objection made by any observer or any voter present, to any ballot paper found in a ballot box, and shall decide every question arising out of the objection. The decision of the returning officer shall be final, subject to reversal on petition under section 85 questioning the return; and every such objection shall be numbered and a corresponding number placed on the back of the ballot paper and initialled by the returning

officer.

(10) All the ballot papers not rejected by the returning officer shall be counted and a list shall be kept of the number of votes for the respective answers relating to the referendum and of the number of rejected ballot papers. The rejected ballot papers shall be put into one packet and the remaining used ballot papers into another, both of which shall be sealed by the returning officer and may be sealed or signed by such observers or witnesses present as desire to seal or sign the packets.

(11) Any of the observers, if not satisfied with the accuracy of the count of any segment of the count, may, on completion of the count of that segment, immediately demand a recount which shall thereupon be carried out in the same manner as the original count; but no observer may demand such a recount more than once in respect of any segment of the count.”.

section 60
(Influencing
electors to vote for
any candidate)

In subsection (1) omit the words “any elector to vote for any candidate or to ascertain for what candidate” and substitute the words “how any voter will vote or to ascertain the manner in which”.

section 61
(Election return)

Omit and substitute -

- “61. (1) The Supervisor shall keep in safe custody -
- (a) the notice appointing a day for the holding of the referendum, with the return showing the answer declared to be mandated in accordance with section 58;
 - (b) a report of his proceedings showing the number of votes cast for the respective answers relating to the referendum, and making such observation as he may think proper as to the state of the referendum papers as received from the presiding officer;
 - (c) information relating to the number of persons to whom, it appears from the counterfoils, ballot papers have been supplied in the electoral district;
 - (d) the reserve supply of undistributed blank

- ballot papers;
- (e) the poll book used at each polling station, a packet containing the counterfoils and unused ballot papers, a packet containing the used ballot papers (other than the rejected ballot papers), a packet containing the spoiled ballot papers, a packet containing the rejected ballot papers and a packet containing the official list of voters used at the polling stations, and the written appointments of the observers; and
- (f) all other documents used for the referendum.

(2) When the result of the poll has been ascertained the Supervisor shall forthwith publicly declare that result and shall subsequently by notice published in the Gazette, publish the result.”

section 62
(Custody of
election
documents)

In subsections (1)(a), (3) and (5) omit the word “election” wherever it appears and substitute the word “referendum”.

Omit subsection (2) and substitute -

“ (2) If proceedings have been brought questioning the number of ballot papers or votes cast in a referendum, the Supervisor shall, on the order of the court, deliver to the court the documents relating to the referendum.”

Omit subsection (4) and substitute -

“ (4) No such referendum documents in the custody of the Supervisor shall be inspected or produced except on the order of a Judge of the Grand Court; and an order under this subsection may be made by the Judge upon his being satisfied by evidence on oath that the inspection or production of such referendum documents is required for the purpose of instituting or maintaining a prosecution for an offence in relation to a referendum or for the purpose of proceedings which have been brought questioning the number of ballot papers or votes cast in the referendum.”

PART V (Election Expenses)	Omit.
section 74 (Regulation of political broadcasts)	Omit subsection (2) and substitute - “ (2) The provisions of this Part shall, with the necessary changes being made, apply in respect of a referendum as they apply to an election.”.
PART VII (Publication of Statistical Information)	Omit.
PART VIII (Election Petitions)	Omit.
section 94 (Loudspeakers, ensigns, banners, advertisements, etc., prohibited on polling day)	In subsection (2) omit the words “candidate, or of the political or other opinions entertained or supposed to be entertained by such candidate” and substitute the words “specific result at the referendum”. In subsection (3)(a) omit the words “particular candidate or group of candidates” and substitute the words “specific result at the referendum”. In subsection (3)(b) omit the words “candidate or group of candidates” and substitute the words “person, group or political party”.
section 95 (Definition of bribery)	Omit subsection (4). In subsection (1)(c) and (d) omit the words “the return of any person as an elected member of the Assembly, or the vote of any elector at any election” and substitute the words “a specific result at the referendum”. Omit subsection (3)(a) and (c).
section 102 (Illegal practices and penalties)	Omit subsection (1)(b). In subsection (1)(c) omit the words “called for the purpose of promoting the election of a candidate as a member to serve in the Assembly” and substitute “called in relation to the referendum”.

Omit subsection (1)(d) and substitute -

“(d) himself or as a director of any body or association corporate, before or during the referendum for the purpose of affecting the results of the referendum, makes or publishes any false statement of fact in relation to the referendum.”.

Form 1 in the Second Schedule (Poll Book) Omit the words “Objections, if any, made on behalf of any candidate” and substitute the words “Objections, if any, made by an observer”.

Form 21 in the Second Schedule (Oath of presiding officer) Omit and substitute -
“FORM 21
Section 36(2)

OATH OF PRESIDING OFFICER

I, _____ the undersigned, appointed presiding officer for the polling station at _____ in the _____ electoral district swear that I will act faithfully in my said capacity of presiding officer, according to law, without partiality, fear, favour or affection, and that I will keep secret the manner in which any of the voters in the above-mentioned polling station marks his ballot in my presence at this referendum.

SO HELP ME GOD.

Presiding Officer

Sworn before me at _____ this ____ day of _____, 2012.”.

Form 23 in the Omit and substitute -
Second Schedule
(Oath of poll clerk)

“FORM 23

Section 37(2)

OATH OF POLL CLERK

I, _____ the undersigned, appointed poll clerk for the polling station at _____ in the _____ electoral district swear that I will act faithfully in my said capacity of poll clerk and also in that of presiding officer if required to act as such, according to law, without partiality, fear, favour or affection and that I will keep secret the manner in which any of the voters in the above-mentioned polling station marks his ballot in my presence at this referendum.

SO HELP ME GOD.

Poll Clerk

Sworn before me at _____ this ____day of _____, 2012.”.

Form 24 in the
Second Schedule
(Direction for the
guidance of
electors)

Omit and substitute -

“FORM 24

Section 39(2)(e)

DIRECTION FOR THE GUIDANCE OF VOTERS

1. A voter must not vote at more than one polling station.
2. A voter may vote for 1 answer only. If the voter votes for more than 1 answer the ballot paper is void and none of the votes will be counted.
3. A voter votes for an answer by placing an **X** to the right of the answer

YES
NO

4. If a voter marks the ballot paper in any way that will identify the voter the ballot paper will be rejected.
5. After voting, a voter must fold the ballot paper along the line shown on the ballot paper and hand the folded ballot paper to the presiding officer.
6. The presiding officer will, in the full view of those present including the voter, remove the counterfoil from the ballot paper and return the ballot paper to the voter who will deposit the ballot paper in the ballot box; except that where the voter is unable from physical or other disability to deposit the ballot paper in the ballot box, the presiding officer will, on the voter's behalf, deposit the ballot paper in the ballot box.
7. If a voter inadvertently spoils a ballot paper he or she can obtain another one by returning the spoilt one to the presiding officer.
8. A person given a ballot paper must not take it from the polling station.
9. After voting, a voter must leave the polling station.”.

Form 25 in the
Second Schedule
(Oath of agent of a
candidate)

Omit and substitute -

“FORM 25

Section 40

OATH OF OBSERVER/SCRUTINEER

I _____ the undersigned,
observer/scrutineer in the referendum held on this day in
the _____ electoral district do
swear that I will keep secret the manner in which any voter
at this polling station marks his ballot paper in my presence
at this referendum.

SO HELP ME GOD.

Signature

Sworn before me at _____ this _____ day of _____, 2012.”.

Form 30 in the Second Schedule (Oath that the elector is the person intended to be referred to in the official list of electors)

Omit and substitute -

“FORM 30

Section 55(1)

OATH THAT THE VOTER IS THE PERSON INTENDED TO BE REFERRED TO IN THE OFFICIAL LIST OF VOTERS

You swear that you are qualified to vote at this referendum and you are not disqualified from voting thereat and that you verily believe that you are the person intended to be referred to by the entry in the official List of Voters used at the polling station, of the name _____ whose occupation is given as _____ and whose street address is given as _____

SO HELP YOU GOD”.

PART 2

APPLICATION AND MODIFICATION OF PROVISIONS OF THE ELECTIONS RULES (2009 REVISION)

rule 3 (Application to be treated as absent elector)

In the proviso to paragraph (1) omit the words “, not being a candidate for election or the agent of such a candidate”.

Omit paragraph (6).

rule 8 (Form of declaration of identity)

Omit paragraphs (2) and (3).

rule 9 (Persons entitled to be present at the issue and receipt of postal ballot papers)	Omit and substitute - “9. No person other than the returning officer, his clerk and observers may be present at the proceedings on the issue or receipt of postal ballot papers.”.
rule 11 (Notice of issue of postal ballot papers)	Omit.
rule 25 (Ballot paper for by-election)	Omit.

Passed by the Legislative Assembly the 10th day of May, 2012.

Cline Glidden

Deputy Speaker.

Sharon Smith

Acting Clerk of the Legislative Assembly.