

A BILL

ENTITLED

AN ACT to Amend and rename the Judicature (Resident Magistrates) Act.

[]

BE IT ENACTED by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the authority of the same, as follows:—

1.—(1) This Act may be cited as the Judicature (Resident Magistrates) (Amendment and Change of Name) Act, 2015, and shall be read and construed as one with the Judicature (Resident Magistrates) Act (hereinafter referred to as the principal Act) and all amendments thereto.

Short title, construction and commencement.

(2) This Act shall come into operation on a day to be appointed by the Minister, by notice published in the *Gazette*.

Amendment
of section 1
of principal
Act.

2. The principal Act is amended in section 1 by deleting the words “Judicature (Resident Magistrates) Act” and substituting therefor the words “Judicature (Parish Courts) Act”.

Amendment
of section 2
of principal
Act.

3. Section 2 of the principal Act is amended by—

- (a) inserting immediately after the words “this Act” the words “, unless the context otherwise requires”;
- (b) deleting the definition of “Magistrate”;
- (c) deleting the full stop appearing at the end of the definition of “Court” and substituting therefor a semi-colon; and
- (d) inserting next after the definition of “Court” the following definition—

““Judge” means the Chief Judge of the Parish Courts or any other Judge of a Parish Court.”.

Amendment
of section 3
of principal
Act and
amendments
consequent
on renaming.

4. Section 3 of the principal Act is amended by deleting, wherever they appear, the words—

- (a) “Resident Magistrate” and substituting therefor in each case the word “Judge of the Parish Court”;
- (b) “Magistrate” and substituting therefor in each case the word “Judge of the Parish Court”;
- (c) “Resident Magistrate’s Court” and substituting therefor in each case the words “Parish Court”;
- (d) “Resident Magistrate’s” and substituting therefor in each case the word “Parish Court Judge’s”;
- (e) “Resident Magistrates” and substituting therefor in each case the word “Judges”,

and all other cognate expressions referring to Resident Magistrates or Resident Magistrates’ Courts in the principal Act and all rules and other enactments made thereunder shall be amended in the appropriate, like manner, to reflect the change in styling of the Courts administered under the principal Act from Resident Magistrates Courts to Parish Courts.

5. The principal Act is amended by inserting next after section 4 the following section—

Insertion of
new section
4A in
principal Act.

“Chief
Judge of
Parish
Courts.

4A.—(1) There shall be appointed in accordance with this section a Chief Judge of the Parish Courts who, in addition to the functions of a Judge of a Parish Court, shall have the functions conferred by this section.

(2) For the avoidance of doubt, the Chief Judge shall be appointed from among the persons qualified to be appointed as a Judge of the Parish Court in accordance with section 12.

(3) The Chief Judge shall be appointed by the Governor-General, by instrument under the Broad Seal, on the advice of the Judicial Service Commission.

(4) The Chief Judge of the Parish Courts shall report directly to, and be subject to the direction of, the Chief Justice in the execution of the functions set out in subsections (5) and (6).

(5) The Chief Judge of the Parish Courts shall be responsible for—

- (a) the general administrative supervision of the work assigned to Parish Courts under this Act or any other law; and
- (b) such other functions as may be delegated by the Chief Justice, by instrument in writing, as the Chief Justice thinks fit.

(6) Each Judge of a Parish Court shall be responsible to, and subject to the direction of, the Chief Judge of the Parish Courts as regards the work of the Parish Court in relation to the administrative duties to be performed by that Judge and the times and places at which those duties are to be performed.”.

Amendment
of section 7
of principal
Act.

5A. Section 7 of the principal Act is amended by deleting—

- (a) the word “occasion;” and substituting therefor the word “occasion.”; and
- (b) the proviso.

Insertion of
new section
7A in
principal Act.

6. The principal Act is amended by inserting next after section 7, the following section—

“Immunity
of Judges
of Parish
Courts.

7A. Judges of the Parish Courts shall enjoy the same immunity from liability as Judges of the Supreme Court.”.

Replacement
of heading.

7. The principal Act is amended by deleting the heading appearing immediately after section 11 and substituting therefor the following—

“Appointment of Judges of the Parish Courts, Executive Legal Officer to Chief Judge of the Parish Courts and Clerk of the Courts”.

Amendment
of section 12
of principal
Act.

8. Section 12 of the principal Act is amended—

- (a) by renumbering the section as section 12(1);
- (b) in subsection (1) (b) as renumbered, by deleting the word “five” and substituting therefor the word “seven”; and
- (c) inserting next after subsection (1), as renumbered, the following as subsections (2) and (3)—

“ (2) The Constitution of Jamaica shall have effect as respects the office of Judge of the Parish Courts as if it were one of the offices mentioned in subsection (2) of section 112 of the Constitution.

(3) For the avoidance of doubt, nothing in this Act shall invalidate the appointment of a person who was appointed, or appointed to act as Judge, by virtue of that person having served or practised, as the case may require, for not less than five years but not for seven or more years at the time of the coming into effect of the *Judicature (Resident Magistrates) (Amendment and Change of Name) Act, 2015.*”.

9. The principal Act is amended by inserting next after section 15, the following section—

Insertion of new section 15A in principal Act.

“ Appoint-
ment of
Executive
Legal
Officer to
Chief
Judge of
the Parish
Courts.

15A.—(1) There shall be appointed in accordance with this section an Executive Legal Officer to the Chief Judge of the Parish Courts.

(2) A person shall not be appointed as Executive Legal Officer to the Chief Judge of the Parish Courts unless the person is an attorney-at-law.

(3) The functions of the Executive Legal Officer to the Chief Judge of the Parish Courts shall be to assist the Chief Judge of the Parish Courts by—

- (a) providing such legal research and support services as may be required;
- (b) liaising with the Director of Court Administration appointed under section 15A of the *Judicature (Supreme Court) Act* on a day-to-day basis on behalf of the Chief Judge of the Parish Courts; and
- (c) carrying out such other administrative functions as may be assigned or delegated to that officer by the Chief Judge of the Parish Courts.”.

10. Section 26 of the principal Act is repealed.

Repeal of section 26 of principal Act.

11. Section 27 of the principal Act is amended by renumbering the section as section 27(1) and inserting next as renumbered the following as subsections (2), (3), (4) and (5)—

Amendment of section 27 of principal Act.

“ (2) Notwithstanding subsection (1), where the Judge is satisfied that arrangements are in place at the Court to allow for notes of evidence to be taken—

- (a) by such electronic or other means as may be specified by rules of court; or

- (b) by a court reporter (whether or not using the means referred to in paragraph (a)),

the Judge may direct that the notes be so taken.

(3) Notes of the evidence taken pursuant to a direction made under subsection (2), shall be admissible in the same manner and for the same purposes as notes of evidence taken under subsection (1).

(4) A direction under subsection (2) may provide for that direction to apply only to a particular case or to such category of cases, or for such period of time, as is specified in the direction.

(5) The services of court reporters appointed under section 16 of *Judicature (Supreme Court) Act* may be made available for the purpose of taking notes of evidence in any Parish Court.”.

Repeal and replacement of section 194 of principal Act.

12. Section 194 of the principal Act is repealed and the following substituted therefor—

“Power to deal with contempt of court.

194.—(1) A person is in contempt of court if the person displays any act in the face or hearing of the Court of a kind which includes—

- (a) language that is indecent, violent or threatening;
- (b) gestures or conduct of an indecent, violent or threatening nature;
- (c) assault or battery committed on a—
 - (i) Judge;
 - (ii) any other officer of the Court; or
 - (iii) any other person in Court.

(2) Where a person displays any of the acts described in subsection (1), a constable, a bailiff or an officer of the Court may, with or without the assistance of any other person, by the order of the Judge—

- (a) take the offender into custody; and
- (b) detain the offender until the rising of the Court.

(3) Where a person displays any of the acts described in subsection (1) the Judge may, if the Judge thinks fit impose upon the offender—

- (a) where the offender contravenes paragraph (a) of subsection (1), a fine not exceeding one hundred thousand dollars;
- (b) where the offender contravenes paragraph (b) of subsection (1), a fine not exceeding one hundred thousand dollars;
- (c) where the offender contravenes paragraph (c) of subsection (1) a fine not exceeding five hundred thousand dollars.”.

13. The principal Act is amended by inserting next after section 305 the following heading and section—

Insertion of
new section
305A in
principal Act.

“ *Penalties*

Minister may amend monetary penalties. 305A. The Minister may, by order subject to affirmative resolution, amend the monetary penalties specified in this Act.”.

14.—(1) The enactments specified in the First Column of the Schedule are amended in the manner set out in relation thereto in the Second Column of the Schedule.

Amendments
to other
enactments.

Schedule. (2) Each amendment specified in the Second Column of the Schedule shall be read and construed as one with the enactment specified in the First Column of the Schedule in relation to that amendment and all other amendments to the enactment.

construction of other enactments. **15.** Any reference in any other enactment to—
(a) a “Resident Magistrate’s Court” shall be construed as a reference to “Parish Court”;
(b) a “Resident Magistrate” shall be construed as a reference to a “Judge of the Parish Court” for the parish concerned.”.

First Column

Second Column

Enactment

Amendment

SCHEDULE

(Section 14)

Amendment of Enactments

First Column

Second Column

Enactment

Amendment

The Coroners Act

Insert next after section 23D the following as section 23E—

“Notes of Evidence. 23E.—(1) Where the coroner is satisfied that arrangements are in place at an inquest to allow for notes of evidence to be taken—

- (a) by such electronic or other means as may be specified by rules of court;
- (b) by a court reporter (whether or not using the means referred to in paragraph (a)),

the Judge may direct that the notes be so taken, and the notes so taken shall be admissible in any other proceedings.

(2) The services of court reporters appointed under section 16 of *Judicature (Supreme Court) Act* may be made available for the purpose of taking notes of evidence in any Parish Court.”.

| First Column | Second Column |
|-----------------------------|--|
| ————— Enactment ————— | ————— Amendment ————— |
| The Judiciary Act | <p>1. In section 2, delete from the opening words in subsection (1) the word “This” and substitute therefor the words “Subject to, section 4A(1A) and (1B) and section 12 (1)(a)”.</p> <p>2. In section 4A—</p> <p style="padding-left: 2em;">(a) insert next after subsection (1) the following subsections—</p> <p style="padding-left: 4em;">“ (1 A) In respect of the offices specified in subsection (1B), the Minister shall within six months after the 1st day of April, 2016, and thereafter within six months after the 1st day of April in every third year or at such earlier times as may be expedient, appoint a Commission to—</p> <p style="padding-left: 4em;">(a) enquire into the adequacy of the salaries and other amounts payable to the persons who hold the specified offices in subsection (1B) and the adequacy of the benefits generally payable to the holders of the specified offices; and</p> |

First Column

 Enactment

Second Column

 Amendment

(b) make such recommendations as the Commission considers appropriate in relation to the matters specified in paragraph (a).

(1B) The specified offices are—

- (a) Judges of the Parish Courts;
- (b) Judges of the Traffic Court and Family Courts; and
- (c) Masters of the Supreme Court; and
- (d) the Registrar of the Supreme Court and the Registrar of the Court of Appeal.”;

(b) in subsection (2)—

- (i) delete the words “subsection (1) shall” and substitute therefor

First Column

Enactment

Second Column

Amendment

the words “subsection (1) or (1A) shall”;

(ii) insert next after the words “subsection (1)(b)” the words “subsection (1) (b) or (1A)(b)”;

(c) insert next after subsection (2) the following subsection—

“ (2A) There shall be paid to the members of a Commission appointed under sub-section (2) such remuneration (whether by way of salaries, honoraria or fees) and such allowances, as the Minister with responsibility for the public service may determine.”.

3. In section 12(1)(a), delete all the words appearing after the words “in respect of” and substitute therefor the words “offices to which section 4A (1) or (1A) applies”.

Passed in the Senate this 3rd day of December, 2015 with six (6) amendments.

A. BROWN

Deputy President.

MEMORANDUM OF OBJECTS AND REASONS

The vast majority of cases tried in Jamaica are heard and disposed of in the Resident Magistrates Courts. The Resident Magistrates Courts are, therefore, critical to the justice system in Jamaica, and for most Jamaicans, the Resident Magistrate's Courts are the principal route to access to justice.

Furthermore, the jurisdiction of the Resident Magistrate's Courts has expended significantly overtime to encompass more complex criminal cases and civil cases of a higher monetary value.

Despite being the judicial officers responsible for most of the work of the court system, Resident Magistrates, unlike Judges of the Supreme Court and the Court of Appeal, are regarded and treated administratively as civil servants. Issues relating to their salaries and benefits are determined by the Ministry responsible for the public service in the same manner as other categories of civil servants. This treatment of the Resident Magistrates is anomalous and inconsistent with the foundational principle of judicial independence from the executive branch of government.

This Bill therefore seeks to amend the Judicature (Resident Magistrates) Act, to provide for—

- (a) The change of name of the principal Act and the designation of the Resident Magistrates, as Judges and Resident Magistrate's Courts as Parish Courts;
- (b) the increase in the number of years of qualification for appointment as Judges to the Parish Courts;
- (c) removal of the requirement (which is no longer being adhered to and is no longer necessary due to improvement in transportation in Jamaica) for a Resident Magistrate to reside in the parish in which that Resident Magistrate is assigned;
- (d) expansion of the mandate of the Independent Commission of the Judiciary to include the review of the salaries and benefits of the Resident Magistrates;
- (e) the recording of notes of evidence of proceedings in the courts by electronic or other means;
- (f) the protection of Resident Magistrates and the dignity of proceedings in those Courts by having rules of contempt of court applicable to them;
- (g) the appointment of a Chief Judge of the Parish Courts, who shall be responsible for the overall administrative supervision of the work of the Parish Courts; and

- (h) the appointment of an Executive Legal Officer to provide support for the work of the Chief Judge of the Parish Courts.

As a companion measure to this Bill, it is intended also to bring into effect a Bill shortly entitled the Judicature (Supreme Court) (Amendment) Act, 2015.

MARK J. GOLDING
Minister of Justice.

A BILL

ENTITLED

AN ACT to Amend and rename the Judicature
(Resident Magistrates) Act.

As passed in the Honourable Senate.

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SECTION 1 OF THE PRINCIPAL ACT WHICH
IT IS PROPOSED TO AMEND

1. This Act may be cited as the Judicature (Resident Magistrates) Act.

SECTION 2 OF THE PRINCIPAL ACT WHICH
IT IS PROPOSED TO AMEND

2. In this Act—

“Magistrate” means the officer appointed as Resident Magistrate;

“Corporate Area” means the combined area of the parishes of Kingston and St. Andrew;

“Court” means the Court in which the Resident Magistrate sits in the exercise of the civil or criminal jurisdiction assigned to him as such.

SECTION 3 OF THE PRINCIPAL ACT WHICH
IT IS PROPOSED TO AMEND

3. In each of the fourteen parishes of the Island there shall be a Court, to be styled the Resident Magistrate’s Court for the parish of _____, with so many stations as may from time to time be fixed by the Minister, which shall have and exercise the jurisdiction by this Act assigned to and conferred upon such Court.

3A. Without prejudice to section 3, the jurisdiction of the Court in the parish of Kingston and of the Court in the parish of St. Andrew shall extend over the entire Corporate Area.

SECTION 4 OF THE PRINCIPAL ACT WHICH
IT IS PROPOSED TO AMEND

4.—(1) It shall be lawful for the Governor-General from time to time to appoint so many Resident Magistrates, not exceeding forty-six and not less than nine, as he may think necessary to satisfactorily discharge the business of such Courts, and every Resident Magistrate so appointed shall by the fact of such appointment, be capable of exercising and administering the jurisdiction and duties of any Resident Magistrate’s Court in the Island.

(2) Every Resident Magistrate so appointed shall be judge of such one or more of the Resident Magistrates’ Courts as shall at the time of his appointment or thereafter be assigned to him, shall have and exercise the jurisdiction or jurisdictions thereof, and shall be styled the Resident Magistrate for the parish or parishes of _____

(3) The Minister may from time to time, upon the recommendation of the Chief Justice, by order amend subsection (1) so as to increase the number of Resident Magistrates to be appointed pursuant to that subsection.

(4) Any order made under subsection (3) shall be subject to affirmative resolution of the House of Representatives.

SECTION 7 OF THE PRINCIPAL ACT WHICH
IT IS PROPOSED TO AMEND

7. It shall be lawful for the Magistrate of one parish, upon the application of the Magistrate of any other parish, to act as the Magistrate of such other parish, either generally for the whole parish, or for any particular station or stations or on any particular occasion;

Provided that a Magistrate shall not act in this manner for another Magistrate for more than a week at a time, without the consent of the Governor-General.

HEADING AFTER SECTION 11 OF THE PRINCIPAL ACT WHICH
IT IS PROPOSED TO AMEND

11. For every Court there shall be a seal of the Court; and all summonses and other process issuing out of the Court, shall be sealed or stamped with such seal.

Appointment of Resident Magistrate and Clerk of the Courts.

SECTION 12 OF THE PRINCIPAL ACT WHICH
IT IS PROPOSED TO AMEND

12. No person shall be appointed a Resident Magistrate unless he is—

(a) a member of the Bar of Jamaica or of England or of Northern Ireland or of the Faculty of Advocates of Scotland, or a Writer to the Signet, or a solicitor of the Supreme Court or of the Supreme Court of Judicature of England, Scotland or Northern Ireland, or a Law Agent admitted to practise in Scotland; and

(b) either he—

- (i) has actually practised in one or other of the capacities specified in paragraph (a) of this section for; or
- (ii) after he became qualified so to practise, has served in the judicial or legal department of any Commonwealth country for; or
- (iii) has so practised and has so served for periods which together amount to; or
- (iv) has so served for a period which, together with one-half of any period during which he held the office of Clerk of the Courts in Jamaica before he became qualified so to practise, amounts to,

not less than five years.

SECTION 15 OF THE PRINCIPAL ACT WHICH
IT IS PROPOSED TO AMEND

15. Every Magistrate shall be *ex officio* a Justice of the Peace for every parish in the Island.

SECTION 26 OF THE PRINCIPAL ACT WHICH
IT IS PROPOSED TO REPEAL

26. Every Magistrate and every Clerk of the Courts shall reside within such parish as the Governor-General may from time to time approve.

SECTION 27 OF THE PRINCIPAL ACT WHICH
IT IS PROPOSED TO REPEAL AND REPLACE

27. The Clerk of the Courts, or in his absence the Assistant Clerk, or such Clerk as may be directed by the Magistrate, shall take notes of evidence in every case heard summarily before either the Court or the Court of Petty Sessions; and the Magistrate shall take notes of the evidence in the trial of all indictments and in all civil suits; and such notes, heretofore taken, or hereafter to be taken, by the Magistrate, or a copy thereof, purporting to bear the seal of the Court, and to be signed and certified as a true copy by the Clerk of the Courts, shall at all times be admitted in all Courts and places whatsoever, in the trial or hearing of all civil proceedings suits and matters, for the purpose of impeaching the credit or contradicting the evidence of any person in accordance with the provisions of sections 15 and 17 of the Evidence Act, as *prima facie* evidence that the statements therein appearing to have been made by such person were so made.

SECTION 194 OF THE PRINCIPAL ACT WHICH
IT IS PROPOSED TO REPEAL AND REPLACE

194. If any person shall wilfully insult the Resident Magistrate or any officer of any Court under this Act, during his sitting or attendance in the Court, or shall wilfully interrupt the proceedings of the Court, or otherwise misbehave in Court, it shall be lawful for any constable or Bailiff or officer of the Court, with or without the assistance of any other person, by the order of the Magistrate, to take the offender into custody and detain him till the rising of the Court; and such Magistrate shall be empowered, if he shall think fit, to impose upon any such offender a fine not exceeding twenty dollars for every such offence, and in default of payment thereof, to commit the offender to prison for any time not exceeding one calendar month, unless the fine shall be sooner paid, and in case of a subsequent offence within six months, by a warrant under his hand, and sealed with the seal of the Court, to commit any such offender to prison for any time not exceeding one calendar month.

SECTION 305 OF THE PRINCIPAL ACT WHICH
IT IS PROPOSED TO AMEND

305.—(1) The Court of Appeal may dismiss the appeal or may allow the appeal and quash the conviction, or may allow the appeal and order a new trial:

Provided, that in any case in which a new trial is ordered the accused may be released on bail on such terms as the Court may think fit, and the case shall not be heard before the Magistrate who presided at the first trial:

Provided also, that no greater punishment shall be inflicted, in the event of a conviction at the second trial, than was inflicted at the first trial:

Provided also, that any imprisonment already undergone under the first conviction shall be reckoned as part of the imprisonment, if any, inflicted under the second conviction.

(2) The Court shall, if it thinks that a different sentence should have been passed, quash the sentence passed at the trial and pass such other less severe sentence warranted in law by the judgment in substitution therefor as it thinks ought to have been passed.

(3) The Court may, notwithstanding it is of opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal, if it considers that no substantial miscarriage of justice has actually recurred.

SECTION 23D OF THE CORONERS ACT WHICH
IT IS PROPOSED TO AMEND

23D. Where a statement contained in a document produced by a computer does not constitute hearsay, such a statement shall be admissible if the conditions specified in section 23C are satisfied in relation to that document.

SECTION 2 OF THE JUDICIARY ACT WHICH
IT IS PROPOSED TO AMEND

2.—(1) This Act applies to the office of Judge, so, however, that the provisions of this Act, other than section 4, shall not apply—

- (a) subject to subsection (2), as respects any existing Judge who, by memorandum in writing to the Governor-General within six months from the 27th day of November, 1973, elects to have his terms of service regulated by the provisions which would have been applicable to him if this Act had not been enacted;
- (b) as respects any Judge whose appointment as such is for an express number of months or years specified in the terms of his appointment.

(2) An existing Judge who makes an election in accordance with subsection (1) may, by further memorandum in writing to the Governor-General within such time as the Governor-General may allow, finally and irrevocably withdraw the previous memorandum and upon such withdrawal the provisions of this Act shall apply to him in lieu of the provisions regulating his terms of service which so applied prior to the withdrawal.

SECTION 4(A) OF THE JUDICIARY ACT WHICH
IT IS PROPOSED TO AMEND

4A.—(1) The Minister shall, within six months after the 1st day of April 1992, and thereafter within six months after the 1st day of April in every third year or at such earlier times as may be expedient appoint a Commission to—

- (a) enquire into the adequacy of the salaries and other amounts payable under this Act and the adequacy of Judges' benefits generally; and
- (b) make such recommendations as the Commission considers appropriate in relation to the matters specified in paragraph (a).

SECTION 12 OF THE JUDICIARY ACT WHICH
IT IS PROPOSED TO AMEND

12.—(1) The Minister may make regulations generally for the carrying out of the provisions of this Act and, without prejudice to the generality of the foregoing, may, taking into account any recommendations contained in the report referred to in section 4A, make regulation—

- (a) relating to the terms of service of, and the allowances payable to, or in respect of, the holder of an office to which this Act applies;
- (b) applying, with such adaptations and modifications as he thinks fit, the provisions of this Act and of the Pensions Act in relation to a Judge who has other public service.

(2) Whenever the Minister is satisfied that it is equitable that any regulation made under subsection (1) should have retrospective effect in order to confer a benefit upon or remove a disability attaching to any person that regulation may be given retrospective effect for that purpose:

