

Summary of Changes Under the Proposed 20th Amendment

CENTRE FOR POLICY ALTERNATIVES

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The Centre for Policy Alternatives (CPA) is an independent, non-partisan organisation that focuses primarily on issues of governance and conflict resolution. Formed in 1996 in the firm belief that the vital contribution of civil society to the public policy debate is in need of strengthening, CPA is committed to programmes of research and advocacy through which public policy is critiqued, alternatives identified and disseminated.

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Summary of Changes under the Proposed 20th Amendment

The proposed 20th Amendment to the Constitution makes several significant changes to the present Constitution, altering the dynamics of the separation of powers between the various organs of government, with the balance of power tipping in favour of the executive President. The amendment also makes major changes to the law-making process, which could result in a lack of transparency and accountability, by reducing the opportunity for citizens to challenge laws by way of pre-enactment review. The structure of the Constitutional Council which were set up by the 19th Amendment and its powers have been changed, which could have a serious impact on the independence of the Independent Commissions. Three areas which were introduced by the 19th Amendment have however remained unchanged; Article 14A of the Constitution which introduced the Right to Information remains intact, the term limit for the executive President remains two terms (a limit which was previously removed by the 18th Amendment and reintroduced by the 19th Amendment) and the term of the President and Parliament both remain at 5 years (both terms were 6 years prior to the 19th Amendment).

The following table provides a detailed comparison of the constitution as it stands at present, with the proposed 20th Amendment. This comparison is accompanied by some initial comments and observations of the Centre of Policy Alternative.

Provision in the Constitution as it Exists	Proposed change under the 20th Amendment	Consequences of Amendment / Comments
Presidential Immunity		
<p>Article 35</p> <p>(1) While any person holds office as President of the Republic of Sri Lanka, no civil or criminal proceedings shall be instituted or continued against the President in respect of anything done or omitted to be done by the President, either in his official or private capacity: Provided that nothing in this paragraph shall</p>	<p>Clause 5 of the 20th Amendment repeals Article 35 and adds the following:</p> <p>Article 35 (1) While any person holds office as President, no proceedings shall be instituted or continued against him in any court or tribunal in respect of anything done or omitted to be done by him either in his official or private capacity.</p>	<p>According to the proposed 20th amendment, the President will be immune from <u>all legal proceedings</u> during the period of his/ her presidency except in the following limited situations</p> <ul style="list-style-type: none"> a) For acts done by the President in his/her capacity as a Minister b) Impeachment proceedings in terms of Article 129(2)

be read and construed as restricting the right of any person to make an application under Article 126 against the Attorney-General, in respect of anything done or omitted to be done by the President, in his official capacity:

Provided further that the Supreme Court shall have no jurisdiction to pronounce upon the exercise of the powers of the President under Article 33(2)(g).

2) Where provision is made by law limiting the time within which proceedings of any description may be instituted against any person, a period of time during which such person holds the office of President of the Republic of Sri Lanka shall not be taken into account in calculating any period of time prescribed by that law.

(3) The immunity conferred by the provisions of paragraph (1) shall not apply to proceedings in the Supreme Court under paragraph (2) of Article 129 and to proceedings under Article 130 (a) relating to the election of the President or the validity of a referendum.”.

(2) Where provision is made by law limiting the time within which proceedings of any description may be brought against any person, the period of time during which such person holds the office of President shall not be taken into account in calculating any period of time prescribed by that law.

(3) The immunity conferred by the provisions of paragraph (1) of this Article shall not apply to any proceedings in any court in relation to the exercise of any power pertaining to any subject or function assigned to the President or remaining in his charge under paragraph (2) of Article 44 or to proceedings in the Supreme Court under paragraph (2) of Article 129 or to proceedings in the Supreme Court under Article 130 (a) relating to the election of the President or the validity of a referendum or to proceedings in the Court of Appeal under Article 144 or in the Supreme Court, relating to the election of a Member of Parliament:

Provided that any such proceedings in relation to the exercise of any power pertaining to any such subject or function shall be instituted against the Attorney-General

- c) Election Petition relating to the validity of a referendum or Presidential Election [Article 130(a)]
- d) Proceedings in the Court of Appeal under Article 144 or in the Supreme Court, relating to the election of a Member of Parliament

The existing provision only grants the President immunity from civil and criminal proceedings.

The existing provisions also expressly gave citizens the right to file Fundamental Rights applications in terms of Article 126 of the Constitution – which is to be removed by the proposed 20th Amendment.

Duties of the President

Article 33(1) It shall be the duty of the President to -

- (a) ensure that the Constitution is respected and upheld;
- (b) promote national reconciliation and integration;
- (c) ensure and facilitate the proper functioning of the Constitutional Council and the institutions referred to in Chapter VIIA; and
- (d) on the advice of the Election Commission, ensure the creation of proper conditions for the conduct of free and fair elections and referenda.

Article 33(2)(c) gives the President the power to summon, prorogue and dissolve Parliament

Article 33A. The President shall be responsible to Parliament for the due exercise, performance and discharge of his powers, duties and functions under the Constitution and any written law, including the law for the time being relating to public security.

Clause 3 of the proposed 20th Amendment repeals Article 33(1) and Article 33(2) (c)

Clause 4 of the proposed 20th Amendment repeals Article 33A. This Article is however included under the Chapter on the Executive by Clause 7 of the 20th Amendment. (Article 42 of the proposed amendment)

Replacing Constitutional Council with Parliamentary Council

Article 41A

The Constitutional Council consists of **Three** *ex officio* members - The Speaker, the Prime Minister and the Leader of the Opposition in Parliament.

Clause 6 of the 20th Amendment repeals the entire Chapter VIIA of the Constitution, on the Constitutional Council and replaces it with a Parliamentary Council

The Parliamentary Council will be comprised of **ONLY** Members of Parliament under the proposed amendment.

[Article 41A (1)(a),(b) and (c)]

Four other Members of Parliament;

- **One** Member of Parliament appointed by the President. **[Article 41A (1)(d)]**
- **Two** Members of Parliament, appointed on the nomination of both the Prime Minister and the Leader of the Opposition. **[Article 41A (1)(e)]**
- **One** Member of Parliament nominated by agreement of the majority of the Members of Parliament belonging to political parties or independent groups. **[Article 41A (1)(f)]**

Three persons of **eminence and integrity** who have **distinguished themselves in public or professional life** and who are **not members of any political party**, to be nominated together by the Prime Minister and the Leader of Opposition.

These nominations made by the Prime Minister and the Leader of the Opposition are required to be approved by Parliament.

[Article 41A (1)(e) and Article 41A (5) of the Constitution]

In nominating the five persons (i.e. Two MPs and three independent persons of eminence) in terms of Article 41A(1)(e) the Prime Minister and the Leader of the Opposition shall consult the leaders of political parties and independent groups represented in Parliament so as to

Article 41A

Parliamentary Council comprising-

- (a) the Prime Minister;
- (b) the Speaker;
- (c) the Leader of the Opposition;
- (d) a nominee of the Prime Minister, who shall be a Member of Parliament; and
- (e) a nominee of the Leader of the Opposition, who shall be a Member of Parliament:

Provided that, the persons appointed in terms of sub-paragraphs (d) and (e) above shall be nominated in such manner as would ensure that the nominees would belong to communities which are communities other than those to which the persons specified in paragraphs (a), (b) and (c) above, belong.

The Members of Parliament appointed to the Parliamentary Council will owe their allegiance to the Government or the main party in opposition.

There is no representation of other political parties represented in Parliament.

No provision to appoint persons of **eminence and integrity** who are **not members of any political party**.

No recognition of the pluralistic character of Sri Lanka, and the need to take diverse views into consideration when making appointments to key positions.

<p>ensure that the Constitutional Council reflects the pluralistic character of Sri Lankan society, including professional and social diversity. [Article 41A (4) of the Constitution]</p>		
<p>Tenure of Constitutional Council</p> <p>Article 41A</p> <p>(7)(a) On the dissolution of Parliament, notwithstanding the provisions of paragraph (2) of Article 64, the Speaker shall continue to hold office as a member of the Council, until a Member of Parliament is elected to be the Speaker...</p> <p>(b) Notwithstanding the dissolution of Parliament, the Prime Minister, the Leader of the Opposition and the Members of Parliament who are members of the Constitutional Council, shall continue to hold office as Members of such Council, until such time after a General Election following such dissolution, a Member of Parliament is appointed as the Prime Minister or recognized as the Leader of the Opposition or such number of Members of Parliament are appointed as Members of the Constitutional Council under sub-paragraphs (d), (e) and (f) of paragraph (1), as the case may be.</p> <p>(8) Every member of the Council appointed under sub-paragraphs (d), (e) and (f) of paragraph (1), shall hold office for a period of three years from the date of appointment unless the member earlier resigns his office by writing addressed to the President, is removed from office by the</p>	<p>Clause 6 of the 20th Amendment repeals the entire Chapter VIIA of the Constitution</p> <p>Tenure of Parliamentary Council Article 41(A) in Clause 6</p> <p>(4) The Speaker shall continue as a Member of the Council even after the dissolution of Parliament, until a Member of Parliament is elected to be the Speaker under paragraph (1) of Article 64.</p> <p>(5) the Leader of the Opposition shall as a Member of the Council until such time after a General Election following such dissolution, a Member of Parliament is recognized as the Leader of the Opposition in Parliament.</p> <p>(6) the two nominees of the Prime Minister and the Leader of the Opposition respectively who are Members of Parliament shall continue as members until such time after a General Election following such dissolution, Members of Parliament are elected to Parliament.</p> <p>(7) The tenure of the Council constituted under this Article shall extend for such period as specified in paragraph (2) of Article 62 and such tenure shall not be affected by any prorogation of Parliament in terms of Article 70:</p>	<p>The proposed amendment allows the President to remove the Prime Minister at any time [Article 47(a) of Clause 6]</p> <p>Under the proposed amendment, the President can remove the two Members of Parliament nominated by the Prime Minister and the Leader of the Opposition respectively at any time for any reason.</p>

<p><u>President on both the Prime Minister and the Leader of the Opposition forming an opinion that such member is physically or mentally incapacitated and is unable to function further in office or is convicted by a court of law for any offence involving moral turpitude or if a resolution for the imposition of civic disability upon him has been passed in terms of Article 81 of the Constitution or is deemed to have vacated his office under paragraph (7) of Article 41E.</u></p>	<p>Provided that, the persons appointed as nominees of the Prime Minister and the Leader of the Opposition respectively, may during such tenure be removed by the President or in the event of an incapacity of such nominee, the President may require the Prime Minister or Leader of the Opposition, as the case may be, to nominate..... another Member of Parliament to be his nominee in the Council.....</p>	
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Limited influence of Parliamentary Council

<p>Article 41B (1)</p> <p>Members to the below mentioned Commissions can be appointed by the President only on the <u>recommendation of the Constitutional Council</u>. The Commissions are;</p> <p>The Election Commission The Public Service Commission The National Police Commission The Human Rights Commission of Sri Lanka The Commission to Investigate Allegations of Bribery or Corruption The Finance Commission The Delimitation Commission The National Procurement Commission The Audit Service Commission.</p>	<p>Clause 6 of the 20th Amendment, Article 41(A)</p> <p>1) The Chairmen and members of the Commissions referred to in Schedule I to this Article and the persons to be appointed to the offices referred to in Part I and Part II of Schedule II to this Article shall be appointed to such Commissions and such offices by the President. In making such appointments, the President shall <u>seek the observations</u> of a Parliamentary Council.</p> <p>SCHEDULE I</p> <ol style="list-style-type: none"> 1. The Election Commission. 2. The Public Service Commission. 3. The National Police Commission. 4. The Human Rights Commission of Sri Lanka. 5. The Commission to Investigate Allegations of Bribery or Corruption. 6. The Finance Commission. 7. The Delimitation Commission 	<p>Under the existing Constitution, decisions of the Constitutional Council are binding on the President.</p> <p>In contrast, the Parliamentary Council ONLY makes observations. The President is not bound by them, s/he only has to “seek observations”. There is no obligation on the part of the President to even consider the observations.</p> <p>Therefore, the Parliamentary Council is much weaker than the Constitutional Council.</p> <p>The President’s power to make appointments to key positions in the public service is unfettered.</p>
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Article 41B (3)

The President is to appoint a Chairman for each of the above-mentioned Commissions on the recommendation of the Council. For this purpose, the Council shall recommend three names for each Commission to the President.

Article 41B(5)

No person appointed under paragraph(1) or a person appointed to act as the Chairman or a member of any such Commission, shall be removed except as provided for in the Constitution or in any written law, and where there is no such provision, such person shall be removed by the President **only with the prior approval of the Council.**

Article 41C (1) of the Constitution

Constitutional Council to **approve the nominees of the President for:**

- The Chief Justice and the other Judges of the Supreme Court
- The President and the Judges of the Court of Appeal
- The Members of the Judicial Service Commission.
- The Attorney-General
- The Auditor-General
- The Inspector-General of Police
- The Ombudsman
- The Secretary-General of Parliament.

SCHEDULE II

PART I

1. The Chief Justice and the Judges of the Supreme Court.
2. The President and Judges of the Court of Appeal.
3. The Members of the Judicial Service Commission, other than the Chairman.

PART II

1. The Attorney-General.
2. The Auditor-General.
3. The Parliamentary Commissioner for Administration (Ombudsman).
4. The Secretary-General of Parliament

(10) No person appointed to be the Chairman or member of a Commission referred to in Schedule I of this Article or any of the persons appointed to the offices referred to in Part I and Part II of Schedule II of this Article shall be removed, otherwise than in the manner provided for in the Constitution or in any law enacted for such purpose. **Where no such provision is made, such person shall be removed by the President.**

The National Procurement Commission and the Audit Service Commission have been abolished. [See also **Clause 57(4) of the 20th Amendment.**]

Where there is no procedure set out in the Constitution or in any written law for the removal of the appointments made;

- In terms of the existing constitution the President can remove such a person with the approval of the Constitutional Council.
- In terms of the proposed 20th amendment, the President does not even need to obtain the “observations” of the Parliamentary Council and can remove such persons at his pleasure.

Under the proposed 20th Amendment, the Inspector-General of Police has been removed from the list of offices referred to in Part I and Part II of Schedule in Article 41A. This results in a lacuna in the appointment of the Inspector-General of Police as the Constitution does not provide for this appointment.

No Transitional Provisions made to deal with appointments to the;

- Right to Information Commission
- Office on Missing Persons
- Office for Reparations

<p>Article 41(c) (3) No person appointed to any Office specified in the Schedule to this Article or to act in any such Office, shall be removed from such Office except as provided for in the Constitution or in any law.</p>		<p>All three of these Acts require appointments to be made on the Recommendation of the Constitutional Council. With the Constitutional Council being abolished & the resulting Parliamentary Council not having the power to make recommendations the individual Acts will require amendments. In the absence of a transitional provision which deals with this situation and without amendment to the acts, the said commissions could become defunct.</p>
<p>Article 41E (4) & (5) of the Constitution The Council should endeavour to make every recommendation, approval or decision it is required to make, by unanimous decision. Where a unanimous decision is not possible, no recommendation, approval or decision made by the Council shall be valid, unless supported by no less than five members of the Council present at such meeting (The Chairman of a meeting will not have an original vote, and is only entitled to a casting vote if there is an equality of votes on any recommendation, approval or decision).</p> <p>Article 41E (3) The quorum for any meeting of the Council shall be five members.</p>	<p>Article 41A (8) of Clause 6 (a) When the President seeks the observations of the Council under paragraph (1), he shall require the Council to convey through the Speaker the observations of the Council, on the persons proposed by him for such appointments, within a period of one week from the date of seeking such observations. (b) If the Council fails to communicate its observations to him within the period specified in sub-paragraph(a), the President shall forthwith proceed to make the aforesaid appointments.</p> <p>Article 41A (11) of Clause 6 The procedure to be followed in obtaining the observations of the Council shall be as determined by the Speaker.</p>	<p>The Constitutional Council has to endeavour to make decisions unanimously, no such qualification placed on the Parliamentary Council. Where there is no unanimity, the decisions of the Constitutional Council have to be supported by at least five members. No such qualification placed on the Parliamentary Council. The Chairperson of the meeting does not have an original vote in the Constitutional Council. There is no quorum for the meetings of the Parliamentary Council, so any number of Members can meet and decide to provide “observations”.</p>

Increase of President's Powers over the Cabinet of Ministers

Ministers and their subjects and functions Article 43

(1) The President shall, in consultation with the Prime Minister, where he considers such consultation to be necessary, determine the number of Ministers of the Cabinet of Ministers and the Ministries and the assignment of subjects and functions to such Ministers.

(2) The President shall, on the advice of the Prime Minister, appoint from among Members of Parliament, Ministers, to be in charge of the Ministries so determined.

(3) The President may at any time change the assignment of subjects and functions and the composition of the Cabinet of Ministers. Such changes shall not affect the continuity of the Cabinet of Ministers and the continuity of its responsibility to Parliament.

Transitional provisions in the 19th Amendment

Section 51 of the 19th Amendment Act

Notwithstanding anything to the contrary in the Constitution, the person holding office as President on the date of commencement of this

Ministers of Cabinet and their subjects and functions.

Article 44

(1) The President shall, from time to time, in consultation with the Prime Minister, where he considers such consultation to be necessary –

(a) determine the number of Ministers of the Cabinet of Ministers and the Ministries and the assignment of subjects and functions to such Ministers; and

(b) appoint from among the Members of Parliament, Ministers to be in charge of the Ministries so determined.

(2) The President may assign to himself any subject or function and shall remain in charge of any subject or function not assigned to any Minister under the provisions of paragraph (1) of this Article or the provisions of paragraph (1) of Article 45 and may for that purpose determine the number of Ministries to be in his charge, and accordingly, any reference in the Constitution or any written law to the Minister to whom such subject or function is assigned, shall be read and construed as a reference to the President.

(3) The President may, at any time, change the assignment of subjects and functions and the

Under both the present Constitution and the proposed 20th Amendment the president can decide the number of ministries and the subjects and functions thereunder consulting the Prime Minister **where he considers such consultation to be necessary.**

However, under the present Constitution, when determining who from the Members of Parliament are to be appointed as Ministers, the President **SHALL** do so on the advice of the Prime Minister. Under the Proposed 20th Amendment the President does not need to consult the Prime Minister.

A significant difference is that the present Constitution does not have provision for the President to assign a Ministry to himself. (The exception being a limited transitional provision in the 19th Amendment which ceased to be applicable after the election of the current President). Under the proposed 20th Amendment the President may

<p>Act, so long as he holds the Office of President may assign to himself the subjects and functions of Defence, Mahaweli Development and Environment and determine the Ministries to be in his charge for that purpose and accordingly, any reference in any written law to the Minister to whom such subject or function is assigned, shall be read and construed as a reference to the President.</p>	<p>composition of the Cabinet of Ministers. Such changes shall not affect the continuity of the Cabinet of Ministers, and the continuity of its responsibility to Parliament.</p>	<p>assign to himself any subject or function, and additionally shall remain in charge of any subject or function which has not been assigned to any Minister.</p>
<p>Ministers who are not members of the Cabinet of Ministers</p> <p>Article 44</p> <p>(1) The President may, on the advice of the Prime Minister, appoint from among Members of Parliament, Ministers who shall not be members of the Cabinet of Ministers.</p> <p>(2) The President may, in consultation with the Prime Minister where he considers such consultation to be necessary, determine the assignment of subjects and functions to Ministers appointed under paragraph (1) of this Article and the Ministries, if any, which are to be in charge of, such Ministers.</p> <p>(3) The President may at any time change any assignment made under paragraph (2).</p>	<p>Ministers who are not members of the Cabinet and their Ministries, subjects and functions.</p> <p>Article 45</p> <p>(1) The President may, from time to time, in consultation with the Prime Minister where he considers such consultation to be necessary –</p> <p>(a) appoint from among Members of Parliament, Ministers who shall not be Members of the Cabinet of Ministers; and</p> <p>(b) determine the assignment of subjects and functions to, and the Ministries, if any, which are to be in charge of, such Ministers.</p> <p>(2) The President may at any time change any appointment or assignment made under paragraph (1) of this Article.</p>	<p>Under the present Constitution the President has to act on the advice of the Prime Minister when appointing Non - Cabinet Ministers. Under the proposed 20th Amendment the President can consult the Prime Minister where he considers such consultation to be necessary.</p> <p>Under the present Constitution the President could change the assignment of subjects and functions, but under the proposed 20th Amendment the President can change the appointments of Non-Cabinet Ministers as well.</p> <p>Under the present Constitution, Non - Cabinet Minister are only responsible to the Cabinet of Ministers and Parliament,</p>

<p>(4) Every Minister appointed under paragraph (1) shall be responsible to the Cabinet of Ministers and to Parliament.</p> <p>(5) Any Minister of the Cabinet of Ministers may, by Notification published in the Gazette, delegate to any Minister who is not a member of the Cabinet of Ministers, any power or duty pertaining to any subject or function assigned to such cabinet Minister, or any power or duty conferred or imposed on him by any written law, and it shall be lawful for such other Minister to exercise and perform any power or duty delegated notwithstanding anything to the contrary in the written law by which that power or duty is conferred or imposed on such Minister of the Cabinet of Ministers.</p>	<p>(3) Every Minister appointed under this Article shall be responsible and answerable to the Cabinet of Ministers and to Parliament.</p> <p>(4) Any Minister of the Cabinet of Ministers may, by Notification published in the <i>Gazette</i>, delegate to any Minister who is not a member of the Cabinet of Ministers any power or duty pertaining to any subject or function assigned to him, or any power or duty conferred or imposed on him by any written law and it shall be lawful for such other Minister to exercise and perform any power or duty delegated to him under this paragraph, notwithstanding anything to the contrary in the written law by which that power or duty is conferred or imposed on such Minister of the Cabinet of Ministers.</p>	<p>but under the proposed 20th Amendment they are responsible and answerable to the Cabinet of Ministers and Parliament.</p>
<p>Deputy Ministers</p> <p>Article 45</p> <p>(1) The President may, on the advice of the Prime Minister, appoint from among Members of Parliament, Deputy Ministers to assist Ministers of the Cabinet of Ministers in the performance of their duties.</p> <p>(2) Any Minister of the Cabinet of Ministers may by Notification published in the Gazette, delegate to his Deputy Minister, any power or duty pertaining to any subject or function assigned to him or any power or duty conferred or imposed on him by any written law, and it shall be lawful for such Deputy Minister to exercise and perform</p>	<p>Deputy Ministers</p> <p>Article 46</p> <p>(1) The President may, from time to time, in consultation with the Prime Minister, where he considers such consultation to be necessary, appoint from among the Members of Parliament, Deputy Ministers to assist the Ministers of the Cabinet of Ministers in the performance of their duties.</p> <p>(2) Any Minister of the Cabinet of Ministers may, by Notification published in the <i>Gazette</i>, delegate to his Deputy Minister any power or duty pertaining to any subject or function assigned to him, or any power or duty conferred or imposed on him by any written law and it shall be lawful for the Deputy Minister to</p>	<p>Under the present Constitution the President is required to act on the advice of the Prime Minister when appointing Deputy Ministers, but under the proposed 20th Amendment the President only needs to consult the Prime Minister when he considers such consultation to be necessary.</p>

<p>any power or duty delegated notwithstanding anything to the contrary in the written law by which that power or duty is conferred or imposed on such Minister.</p>	<p>exercise and perform any power or duty delegated to him under this paragraph notwithstanding anything to the contrary in the written law by which that power or duty is conferred or imposed on such Minister of the Cabinet of Ministers.</p>	
<p>Tenure of office of the Prime Minister, and the limitation of numbers and tenure of office of Ministers and Deputy Ministers</p> <p>Article 46</p> <p>(1) The total number of-</p> <p>(a) Ministers of the Cabinet of Ministers shall not exceed thirty; and</p> <p>(b) Ministers who are not members of the Cabinet of Ministers and Deputy Ministers shall not, in the aggregate, exceed forty.</p> <p>(2) The Prime Minister shall continue to hold office throughout the period during which the Cabinet of Ministers continues to function under the provisions of the Constitution unless he -</p> <p>(a) resigns his office by a writing under his hand addressed to the President; or</p> <p>(b) ceases to be a Member of Parliament.</p> <p>(3) A Minister of the Cabinet of Ministers, a Minister who is not a member of the Cabinet of</p>	<p>Tenure of office of the Prime Minister, Ministers and Deputy Ministers.</p> <p>Article 47</p> <p>The Prime Minister, a Minister of the Cabinet of Ministers, any other Minister or Deputy Minister shall continue to hold office throughout the period during which the Cabinet of Ministers continues to function under the provisions of the Constitution unless he -</p> <p>(a) is removed by a writing under the hand of the President;</p> <p>(b) resigns his office by a writing under his hand addressed to the President; or</p> <p>(c) ceases to be a Member of Parliament.</p>	<p>Limitations on the number of Ministers</p> <p>Under the present Constitution there is a limitation on the number of Ministers (30), Non cabinet Minister and Deputy Ministers (40 in total). An exception is when a national government is formed, and in that case Parliament shall decide the number of Minister, Non – Cabinet Ministers and Deputy Ministers.</p> <p>Under the proposed 20th Amendment however, there is no such limitation.</p> <p>Removal of the Prime Minister</p> <p>Under the Present Constitution, the Prime Minister cannot be removed by the President, he shall continue to hold office throughout the period in which the Cabinet functions unless he resigns or ceases to be a Member of Parliament.</p> <p>Under the Proposed 20th Amendment, the removal of the Prime Minister is governed by the same provisions as the removal of any other Minister, including</p>

Ministers and a Deputy Minister, shall continue to hold office throughout the period during which the Cabinet of Ministers continues to function under the provisions of the Constitution unless he-

(a) is removed from office under the hand of the President on the advice of the Prime Minister;

(b) resigns from office by a writing under his hand addressed to the President; or

(c) ceases to be a Member of Parliament.

(4) Notwithstanding anything contained in paragraph (1) of this Article, where the recognized political party or the independent group which obtains highest number of seats in Parliament forms a National Government, the number of Ministers in the Cabinet of Ministers, the number of Ministers who are not Cabinet of Ministers and the number of Deputy Ministers shall be determined by Parliament.

(5) For the purpose of paragraph (4), National Government means, a Government formed by the recognized political party or the independent group which obtains the highest number of seats in Parliament together with the other recognized political parties or the independent groups.

by the President.

Removal of Minister, Non - Cabinet Minister and Deputy Ministers

Under the present Constitution all such categories of Ministers continue to function unless they resign or cease to be a Member of Parliament or **if they are removed by the President acting on the advice of the Prime Minister.**

Under the proposed 20th Amendment however, the President can unilaterally remove any Minister, including the Prime Minister.

(This would however be subject to Article 43(3) of the proposed 20th Amendment which requires the President to appoint the Member of Parliament who in his opinion is most likely to command the confidence of Parliament as Prime Minister.)

Cabinet of Ministers After dissolution of Parliament.

Article 47

(1) The Cabinet of Ministers functioning immediately prior to the dissolution of Parliament shall, notwithstanding such dissolution, continue to function and shall cease to function upon the conclusion of the General Election and accordingly, the Prime Minister and the Ministers of the Cabinet of Ministers, shall continue to function unless they cease to hold office as provided in sub paragraph (a) of paragraph (2) or sub paragraph (a) or (b) of paragraph (3) of Article 46 and shall comply with the criteria set out by the Commissioner of Elections and shall not cause any undue influence on the General Election.

(2) Notwithstanding the death, removal from office or resignation of the Prime Minister, during the period intervening between the dissolution of Parliament and the conclusion of the General Election, the Cabinet of Ministers shall continue to function with the other Ministers of the Cabinet of Ministers as its members, until the conclusion of the General Election. The President may appoint one such Minister to exercise, perform and discharge the powers, duties and functions of the Prime Minister.

(3) On the death, removal from office or resignation, during the period intervening

Cabinet of Ministers After dissolution of Parliament.

Article 48

(1) The Cabinet of Ministers functioning immediately prior to the dissolution of Parliament shall notwithstanding such dissolution continue to function and shall cease to function upon the conclusion of the General Election. Accordingly, the Prime Minister, Ministers of the Cabinet of Ministers, other Ministers and Deputy Ministers shall continue to function unless they cease to hold office as provided in paragraph (a) or (b) of Article 47.

(2) Notwithstanding the death, removal from office or resignation of the Prime Minister, during the period intervening between the dissolution of Parliament and the conclusion of the General Election, the Cabinet of Ministers shall continue to function with the other Ministers of the Cabinet as its members until the conclusion of the General Election. The President may appoint one such Minister to exercise, perform and discharge, or may himself exercise, perform and discharge the powers, duties and functions of the Prime Minister. If there is no such other Minister, the President shall himself exercise perform and discharge the powers, duties and functions of the Cabinet of Ministers until the conclusion of the General Election.

(3) On the death, removal from office or resignation,

Under the present Constitution it is expressly provided for that the Cabinet of Ministers functioning while Parliament is dissolved, until the conclusion of the General Election, **shall comply** with the criteria set by the Commissioner of Elections and shall not cause any undue influence on the General Election. This express provision has been **removed** under the proposed 20th Amendment.

In the event of the death, removal from office or resignation of the Prime Minister in the intervening period between the dissolution of Parliament and the conclusion of the General Election, the present Constitution empowered the President to appoint another member of the Cabinet to carry out the duties and functions of the Prime Minister (Article 47(2)). However, under the proposed 20th Amendment, if there is no such other Minister, the President shall himself exercise such duties and functions of the Prime Minister.

The same in the case of the death, removal or resignation of a Minister, the

<p>between the dissolution of Parliament and the conclusion of the General Election, of a Minister of the Cabinet of Ministers, the President may, on the advice of the Prime Minister, appoint any other Minister to be the Minister in charge of the Ministry of such Minister or to exercise, perform and discharge the powers, duties and functions of such Minister.</p>	<p>during the period intervening between the dissolution of Parliament and the conclusion of the General Election, of a Minister of the Cabinet of Ministers or any other Minister, the President may appoint any other Minister to be the Minister in charge of such Ministry or to exercise, perform and discharge the powers, duties and functions of such Minister or may himself take charge of such Ministry or exercise, perform and discharge such powers, duties and functions.</p>	<p>proposed 20th Amendment allows the President to exercise such powers as well.</p>
<p>Acting Minister and Deputy Minister.</p> <p>Article 49</p> <p>Whenever a Minister of the Cabinet of Ministers, a Minister who is not a members of the Cabinet of Ministers or a Deputy Minister is unable to discharge the functions of his office, the President may, on the advice of the Prime Minister, appoint any Member of Parliament to act in the place of such Minister of the Cabinet of Ministers, Minister who is not a member of the Cabinet of Ministers or a Deputy Minister.</p>	<p>Acting Minister and acting Deputy Minister.</p> <p>Article 50</p> <p>Whenever a Minister of the Cabinet of Ministers, other Minister or Deputy Minister is unable to discharge the functions of his office, the President may appoint any Member of Parliament to act in place of the said Minister of the Cabinet of Ministers, other Minister or Deputy Minister.</p>	<p>Under the present Constitution the President needs to act on the advice of the Prime Minister when appointing Acting Ministers, and this requirement is dispensed with under the proposed 20th Amendment.</p>
<p>Secretary to the Prime Minister</p> <p>Article 51</p> <p>(1) There shall be a Secretary to the Prime Minister who shall be appointed by the President.</p> <p>(2) The Secretary shall have charge of the office</p>	<p>Secretaries to the Ministries</p> <p>Article 52</p> <p>(1) There shall be for each Ministry a Secretary who shall be appointed by the President.</p> <p>(2) The Secretary to the Ministry shall, subject to the</p>	<p>There is no separate provision for a secretary to the Prime Minister under the proposed 20th Amendment.</p>

of the Prime Minister and shall perform and discharge the duties and functions of his office, subject to the directions of the Prime Minister.

Secretaries to the Ministries

Article 52

(1) There shall be a Secretary for every Ministry of a Minister of the Cabinet of Ministers, who shall be appointed by the President.

(2) The Secretary to a Ministry shall, subject to the direction and control of his Minister, exercise supervision over the departments of government and other institutions in charge of the Minister.

(3) The Secretary to a Ministry shall cease to hold office upon the dissolution of the Cabinet of Ministers under the provisions of the Constitution or upon a determination by the President under Article 43 or 44 which results in the Ministry ceasing to exist.

(4) For the purposes of this Article, the office of the Secretary to the President, the office of the Secretary to the Cabinet of Ministers, the office of the Auditor-General, the office of the Parliamentary Commissioner for Administration (Ombudsman), the office of the Secretary-General of Parliament, the Constitutional Council, and the Commissions referred to in the Schedule to Article 41B shall be deemed not to be departments of Government.

direction and control of his Minister, exercise supervision over the departments of Government or other institutions in the charge of his Minister.

(3) The Secretary to a Ministry shall cease to hold office upon the dissolution of the Cabinet of Ministers under the provisions of the Constitution or upon a determination by the President under Article 44 or Article 45 which results in such Ministry ceasing to exist.

(4) Where the Secretary to a Ministry so ceases to hold office, the Cabinet of Ministers may appoint such Secretary to any other post in the Public Service:

Provided that a person who immediately prior to his appointment as Secretary was in the Public or Local Government Service or in the service of any public corporation shall be deemed to have been temporarily released from such service and shall be entitled to revert to such service without loss of seniority upon his so ceasing to hold office as Secretary.

(5) The proviso to paragraph (4) of this Article shall, *mutatis mutandis*, apply to a Secretary to a Ministry upon –

(a) the President terminating his services, otherwise than by dismissal on disciplinary grounds; or

(b) his resignation, unless disciplinary proceedings are pending or contemplated against him on the date

Article 52(4) of the proposed 20th Amendment allows the Cabinet of Ministers to appoint a secretary who has ceased to hold office to any other post in the public service.

A secretary who was immediately prior in the Public or Local Government Service or in the service of any public corporation shall be deemed to have been temporarily released from such service and shall be entitled to revert to such service without loss of seniority upon his so ceasing to hold office as Secretary.

The list of offices which are not deemed to be public offices have been changed under the proposed 20th Amendment.

	<p>of his resignation.</p> <p>(6) For the purposes of paragraphs (4) and (5) of this Article, any person who has continuously held the office of Secretary to the President, Secretary to a Ministry or any other office in the President's staff or any one or more of such offices shall be deemed to have continuously held the office which such person last held.</p>	
Changes to Parliament		
<p>Article 70(1) of the Constitution</p> <p>The President can dissolve Parliament;</p> <ul style="list-style-type: none"> ➤ Before the expiration of four and a half years, since the first meeting of Parliament; <ul style="list-style-type: none"> ○ IF two thirds of the Members of Parliament pass a resolution requesting him to dissolve Parliament. ➤ After the expiration of four and a half years since the first meeting of Parliament; <p>Any time at his own discretion</p>	<p>Clause 14 of the 20th Amendment repeals Article 70 (1) and replaces it with the following.</p> <p>1) The President may, from time to time, by Proclamation summon, prorogue and dissolve Parliament: Provided that –</p> <p>(a) subject to the provisions of sub-paragraph (d), when a General Election has been held consequent upon a dissolution of Parliament by the President, the President shall not thereafter dissolve Parliament until the expiration of a period of one year from the date of such General Election, unless Parliament by resolution requests the president to dissolve Parliament.</p> <p>(b) the President shall not dissolve Parliament on the rejection of the Statement of Government Policy at the commencement of the first session of Parliament after a General Election;</p>	<p>Under the proposed amendment, the President has the power to decide when to dissolve Parliament at any time after one year from the date of such General Election, except in certain limited situations.</p> <p>This increases the power/ control the President has over Parliament (coupled with the fact that the President can appoint any Member of Parliament as a Minister) and appoint any number of Ministers.</p> <p>Members of Parliament can by resolution decide to request the President to dissolve Parliament at any time. This</p>

	<p>(c) subject to the provisions of sub-paragraph (d), the President shall not dissolve Parliament after the Speaker has entertained a resolution complying with the requirements of sub-paragraphs (a) and (b) of paragraph (2) of Article 38, unless –</p> <p>(i) such resolution is not passed as required by sub-paragraph (c) of paragraph (2) of Article 38;</p> <p>(ii) the Supreme Court determines and reports that the President has not become permanently incapable of discharging the functions of his office or that the President has not been guilty of any of the other allegations contained in such resolution;</p> <p>(iii) the consequent resolution for the removal of the President is not passed as required by sub paragraph (e) of paragraph (2) of Article 38; or</p> <p>(iv) Parliament by resolution requests the President to dissolve Parliament;</p> <p>(d) where the President has not dissolved Parliament consequent upon the rejection by Parliament of the Appropriation Bill, the President shall dissolve Parliament if Parliament rejects the next Appropriation Bill.</p>	<p>resolution will only require a simple majority.</p>
<p>Article 91(1)(d)(xiii) of the Constitution</p> <p>Persons who are dual citizens are disqualified from being elected as Members of Parliament [by virtue of article 92(b)]. This provision also disqualifies a person who is a dual citizen from being elected as President of the Republic.</p>	<p>Clause 17 of the 20th Amendment repeals Article 91(1)(d)(xiii) of the Constitution</p>	<p>Dual Citizens are no longer disqualified from contesting Parliamentary elections and Presidential elections.</p>

Impact on Law making Process

<p>Article 78(1) Every Bill shall be published in the Gazette at least fourteen days before it is placed on the Order Paper of Parliament.</p>	<p>Clause 15 (1) of the 20th Amendment repeals Article 78 (1) and replaces it with the following:</p> <p>Every Bill shall be published in the Gazette at least seven days before it is placed on the Order Paper of Parliament;</p>	<p>The proposed amendment reduces the period of time a Bill has to be made accessible to the public (by being published in the gazette), before it can be placed on the order paper of Parliament (from 14 to 7 days).</p>
	<p>Clause 15 (2) of the 20th Amendment adds the new Article 78 (3)</p> <p>“Any amendment proposed to a Bill in Parliament shall not deviate from the merits and principles of such Bill”</p>	<p>The proposed amendment attempts to provide limitations against overly broad committee stage amendments (CPA has continuously criticized such committee stage amendments) to Bills.</p>
<p>The Constitution DOES NOT permitted the government to pass legislation as “Urgent Bills”</p>	<p>Clause 27 of the 20th Amendment adds the new Article 122</p> <p>(1) In the case of a Bill which is, in the view of the Cabinet of Ministers, urgent in the national interest, and bears an endorsement to that effect under the hand of the Secretary to the Cabinet –</p> <p>(a) the provisions of Article 78(1) and of Article 121, shall subject to the provisions of paragraph (2) of this Article, have no application;</p> <p>(b) the President shall, by a written reference addressed to the Chief Justice, require the special determination of the Supreme Court as to whether</p>	<p>However there is no mechanism to enforce this safeguard with no scope for judicial review in any form of such committee stage amendments in Parliament.</p> <p>The Amendment allows the President to refer to the Supreme Court directly any Bill certified by the Cabinet of Ministers as “urgent in the national interest”. The Supreme Court is then tasked to decide on the Constitutionality of the Bill within 24 hours or 72 hours depending on the instructions of the President.</p>

	<p>the Bill or any provision thereof is inconsistent with the Constitution. A copy of such reference shall at the same time be delivered to the Speaker;</p> <p>(c) the Supreme Court shall make <u>its determination within twenty-four hours (or such longer period not exceeding three days as the President may specify)</u> of the assembling of the Court and shall communicate its determination only to the President and the Speaker.</p> <p>(2) The provisions of paragraph (2) of Article 121 shall, mutatis mutandis, apply to such Bill.</p> <p>(3) The provisions of this Article shall not apply to any Bill for the amendment, repeal and replacement, alteration or addition of any provision of the Constitution or for the repeal and replacement of the Constitution</p>	<p>There is no requirement to gazette “urgent bills”. This results in a situation where citizens might not even know the contents of such Bills before it is passed by Parliament.</p> <p>Citizens have NO “right to be heard” in such proceedings, the Supreme Court can decide whether to allow a person to be heard “as may appear to the Court to be necessary” [Article 134 of the Constitution].</p> <p>However, Constitutional amendments or a new constitution CANNOT be passed as an urgent Bill. BUT due to the limitations on time, Bills which are unconstitutional could be passed into law. [Article 80(3)].</p>
<p>The Constitution DOES NOT permit the President to submit to the People by way of a referendum any Bill (which is not a constitutional amendment), which has been rejected by Parliament.</p>	<p>Clause 16 of the 20th Amendment adds the new Article 85(2)</p> <p>The President may in his discretion submit to the People by Referendum any Bill (not being a Bill for the repeal or amendment of any provision of the Constitution, or for the addition of any provision to the Constitution, or for the repeal and replacement of the Constitution, or which is inconsistent with any provision of the Constitution), which has been rejected by Parliament.</p>	<p>Allows the President to circumvent Parliament to pass laws. However, the ultimate decision is with the People.</p>

Impact on powers of Election Commission

Article 103 of the Constitution Election Commission

103 (1) There shall be an Election Commission (in this Chapter referred to as the “Commission”) consisting of three members appointed by the President on the recommendation of the Constitutional Council, from amongst persons who have distinguished themselves in any profession or in the fields of administration or education. One of the members so appointed shall be a retired officer of the Department of Elections, who has held office as a Deputy Commissioner of Elections or above. The President shall on the recommendation of the Constitutional Council, appoint one member as its Chairman.

103 (7) The President may grant a member leave from the performance of his duties relating to the Commission for a period not exceeding two months, and may appoint a person qualified to be a member of the Commission to be a temporary member for the period of such leave. Every such appointment shall be made on the recommendation of the Constitutional Council.

Clause 19 of the 20th Amendment effects changes to Article 103 (1) and 103 (7)

103 (1) There shall be an Election Commission (in this Chapter referred to as the “Commission”) consisting of three members appointed by the President from amongst persons who have distinguished themselves in any profession or in the fields of administration or education. The President shall appoint one member as its Chairman.

103 (7) The President may grant a member leave from the performance of his duties relating to the Commission for a period not exceeding two months and may appoint a person qualified to be a member of the Commission to be a temporary member for the period of such leave.

The below requirements concerning appointments to the Election Commission no longer exist:

- Recommendation of the Constitutional Council to make appointments to the Elections Commission.
- Recommendation of Constitutional for President to appoint Chairman of the Elections Commission.
- For one of the members to be a retired officer of the Department of Elections, who has held office as a Deputy Commissioner of Elections or above.

Temporary appointments made by the President to the Elections Commission no longer required to be made on the recommendation of the Constitutional Council.

The changes effected to the composition and appointments to the Commission indicates a reversion to the 18th Amendment.

Article 104B (4) of the Constitution makes provision for the Election Commission to prohibit the use of public or State-owned property for the purposes of Election campaigning

104B (4) (a) The Commission shall have the power during the period of an election, to prohibit the use of any movable or immovable property belonging to the State or any public corporation –

(i) for the purpose of promoting or preventing the **election or any candidate of any political party** or independent group contesting at such election

Clause 20 (1) of the 20th Amendment effects changes to Article 104B (4) (a) (i) by replacing the words “the election or any candidate of any political party”, with the words “**the election of any candidate or any political party**”

Clause 20 (2) of the 20th Amendment inserts the following provision immediately after Article 104B (4) (a) (i):

(4a) For the avoidance of doubt it is stated that any guideline issued by the Commission during the period commencing on the date of the making of an Order for the holding of an election or the date of the making of a Proclamation requiring the conduct of the Referendum, as the case may be, shall –

(a) be limited to matters which are directly connected with the holding of the respective election or the conduct of the respective Referendum, as the case may be; and

(b) not be connected directly with any matter relating to the public service or any matter within the ambit of administration of the Public Service Commission or the Judicial Service Commission, as

The insertion of this new clause limits the guidelines issued by the Election Commission to the subject matters which are directly connected with the holding of the respective election or the conduct of the respective Referendum. The Election Commission will not be authorized to issue guidelines pertaining to any matter relating to the public service or any matter within the ambit of administration of the Public Service Commission or the Judicial Service Commission.

<p>Article 104B (5) (b) of the Constitution ensures compliance of the State media with the guidelines issued by the Election Commission</p> <p>104B (5) (b) It shall be the duty of the Chairman of the Sri Lanka Broadcasting Corporation, the Chairman of the Sri Lanka Rupavahini Corporation and the Chairman of the Independent Television Network and the Chief Executive Officer of every other broadcasting or telecasting enterprise owned or controlled by the State to take all necessary steps to ensure compliance with such guidelines as are issued to them under sub-paragraph (a).</p>	<p>the case may be, appointed under the Constitution.”</p> <p>Clause 20 (3) of the 20th Amendment repeals and replaces Article 104B (5) (b) with the following:</p> <p>104B (5) (b) It shall be the duty of <u>any broadcasting or telecasting operator or any proprietor or publisher of a newspaper</u>, as the case may be, to take all necessary steps to ensure compliance with any guidelines as are issued to them under paragraph (a).</p>	<p>All broadcasting or telecasting operators and proprietors and publishers of a newspaper will be required to ensure compliance with guidelines issued by the Commission from time to time in respect of the holding of any election or Referendum, which the Commission considers necessary to ensure a free and fair election. Previously the application of this provision on compliance was limited to media institutions owned or controlled by the State.</p> <p>This is a reversion to the position in the 18th Amendment.</p>
<p>Article 104E (1) of the Constitution Commissioner General of Elections</p> <p>104E (1) There shall be a Commissioner General of Elections who shall, <u>subject to the approval of the Constitutional Council</u>, be appointed by the Commission on such terms and conditions as may be determined by the Commission.</p>	<p>Clause 21 of the 20th Amendment repeals and replaces Article 104E (1) with the following:</p> <p>104E (1) There shall be a Commissioner-General of Elections who shall be appointed by the Commission on such terms and conditions as shall be determined by the Commission.</p>	<p>The approval of the Constitutional Council will no longer be required for the appointment of the Commissioner General of Elections.</p> <p>This is a reversion to the position in the 18th Amendment.</p> <p>The repeal of Article 104GG would mean a failure to cooperate with the Commission to secure the enforcement of any law relating to the holding of an</p>

<p>Article 104GG of the Constitution enacts that non-compliance with a direction of the Election Commission will be an offense</p> <p>104GG. (1) Any public officer, any employee of any public corporation, business or other undertaking vested in the Government under any other written law and any company registered or deemed to be registered under the Companies Act, No. 7 of 2007, in which the Government or any public corporation or local authority holds fifty per centum or more of the shares of that company, who –</p> <p>(a) refuses or fails without a reasonable cause to co-operate with the Commission, to secure the enforcement of any law relating to the holding of an election or the conduct of a Referendum; or</p> <p>(b) fails without a reasonable cause to comply with any directions or guidelines issued by the Commission under subparagraph (a) of paragraph (4) or subparagraph (a) of paragraph (5), respectively, of Article 104B, shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one hundred thousand rupees or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.</p> <p>(2) Every High Court established under Article 154P of the Constitution shall have jurisdiction to hear and determine any matter referred to in paragraph (1).</p>	<p>Clause 22 of the 20th Amendment repeals Article 104GG of the Constitution</p>	<p>election or the conduct of a Referendum, or a failure to comply with any directions or guidelines issued by the Commission, will no longer constitute an offense.</p>
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Impact on the Powers of the National Police Commission

Article 155A(1) of the Constitution provides that a member of the National Police Commission may be appointed by the President only with the approval of the Constitutional Council

Article 155A(4) of the Constitution provides that a member of the National Police Commission may be removed by the President only with the approval of the Constitutional Council

Article 155B(5) The Inspector-General of Police shall be entitled to be present at meetings of the Commission, except where any matter relating to him is being considered. He shall have no right to vote at such meetings.

Article 155C subjects the Commission to the *jurisdiction conferred on the Supreme Court under Article 126 and the powers granted to the Administrative Appeals Tribunal under Article 155L*

Clause 42 of the 20th Amendment alters this to read, Article 155A(1) There shall be a National Police Commission consisting of not more than seven members appointed by the President.

Article 155A(4) Every member of the Commission shall hold office for a period of three years from the date of his appointment, (...) *or is removed from office by the President(...)*

Clause 43 of the 20th Amendment repeals Article 155B(5)

Clause 44 of the 20th Amendment alters this to read
Subject to the jurisdiction conferred on the Supreme Court under paragraph (1) of Article 126, no court or tribunal shall have the power or jurisdiction to inquire into, or pronounce upon or in any manner call in question any order or decision made by the Commission or a Committee, in pursuance of any power or duty, conferred or imposed on such Commission or Committee under this Chapter or under any other law.

The President has unrestricted power over the appointment and removal of members of the Commission. This would undermine the independence of the National Police Commission and in turn the police service.

This Clause reverts the constitutional position on the appointments and removal of members of the Commission to the position adopted in the 18th amendment.

The Inspector-General of Police shall no longer be entitled to be present at meetings of the Commission.

<p>Articles 155G-155L of the Constitution specify the powers of the Commission and the right to appeal against the decisions of the Commission</p>	<p>Clause 46 of the 20th Amendment inserts the following new Article</p> <p>Article 155FF. The Commission shall be empowered to entertain and investigate complaints from members of the public or any aggrieved person against a police officer or the police force, and shall provide redress in accordance with the provisions of any law enacted by Parliament. For this purpose the Commission may make rules to establish procedures for entertaining and investigating complaints from members of the public or any aggrieved person.”</p> <p>Clause 47-51 of the 20th Amendment repeals Articles 155G-155L</p>	<p>This removes from the National Police Commission the power of appointment, promotion, transfer, disciplinary control and dismissal of police officers, and the right of appeal to the Commission of a police officer aggrieved by any order relating to promotion, transfer or any order on a disciplinary matter or dismissal by a Committee or Officer to whom such powers are delegated by the Commission.</p>
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Impact on the Powers of the Judicial Service Commission

<p>Article 111D specifies the constitution of the Judicial Service Commission</p> <p>Article 111D. (1) There shall be a Judicial Service Commission consisting of the Chief Justice and the two most senior Judges of the Supreme Court appointed by the President, subject to the approval of the Constitutional Council.</p>	<p>Clause 25 of the 20th Amendment repeals Article 111D and replaces it with</p> <p>Article 111D. (1) There shall be a Judicial Service Commission consisting of the Chief Justice and <i>two other Judges</i> of the Supreme Court <i>appointed by the President</i>. (2) The Chief Justice shall be the Chairman of the Commission.”</p>	<p>Under the proposed 20th Amendment, the President may appoint any two judges of the Supreme Court as members of the Judicial Service Commission, without reference to their seniority and judicial experience serving as a Judge of a Court of First Instance. The President may appoint and remove such members without the requirement of approval by the Parliamentary Council.</p>
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<p>(2) Where the Chief Justice and the two most senior Judges of the Supreme Court are Judges who have not had any judicial experience serving as a Judge of a Court of First Instance, the Commission shall consist of the Chief Justice, the senior most Judge of the Supreme Court and the next most senior Judge of such Court, who has had experience as a Judge of a Court of First Instance.</p> <p>(3) The Chief Justice shall be the Chairman of the Commission.</p> <p>Removal of a member of the Commission Article 111E (6) The President may, with the approval of the Constitutional Council, and for cause assigned, remove from office any member of the Commission.</p>	<p>Clause 26 of the 20th Amendment repeals this provision and replaces it with (6) The President may, for cause assigned, remove from office any member of the Commission.”</p>	<p>This gives unfettered power to the President over the Judicial Service Commission which would undermine the independence of the Commission and in turn the independence of the Judiciary. Additionally, the deletion of criteria for appointment as members of the Commission reduces the transparency in the appointment process and raises concerns on the suitability of the persons appointed to this office.</p> <p>This Clause reverts the constitutional position on the appointments and removal of members of the Commission to the position adopted in the 18th Amendment.</p>
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Impact on the Commission to Investigate Allegations of Bribery and Corruption

	<p>Clause 54 of the 20th Amendment Chapter XIXA of the Constitution (Article 156A) is hereby repealed.</p>	<p>Removes constitutional recognition for the Commission to Investigate Allegations of Bribery and Corruption.</p> <p>Removes Constitutional recognition for the Commission to Investigate Allegations of Bribery and Corruption Act, No 19 of 1994 until Parliament passes a new law.</p> <p>A future government can with a simple majority of Parliament abolish the</p>
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		<p>Commission to Investigate Allegations of Bribery and Corruption.</p> <p>There was no constitutional recognition of the Commission to Investigate Allegations of Bribery and Corruption under the 18th Amendment to the Constitution.</p>
Impact on the National Audit Service Commission		
<p>Appointment of the Auditor-General Article 153. (1) There shall be an Auditor-General <i>who shall be a qualified Auditor, and subject to the approval of the Constitutional Council</i>, be appointed by the President and shall hold office during good behaviour.</p> <p>Article 154(9) specifies that the definition of ‘a qualified auditor’ given in Article 14(8) applies to the Auditor General appointed under Article 153(1)</p> <p>Article 153 (4) Whenever the Auditor-General is unable to discharge functions of his office, the President may, <i>subject to the approval of the Constitutional Council</i>, appoint a person to act in the place of the Auditor-General.</p> <p>Article 153A-153H specify the constitution, meetings, powers and functions, immunity and liabilities of the Audit Service Commission</p>	<p>Clause 31 of the 20th Amendment repeals this provision and replaces it with Article 153 (1) There shall be an Auditor-General <i>who shall be appointed by the President</i> and who shall hold office during good behaviour.</p> <p>Clause 40 of the 20th amendment repeals Article 154(9) of the Constitution</p> <p>Article 153 (4) Whenever the Auditor-General is unable to discharge the functions of his office, <i>the President may appoint a person</i> to act in the place of the Auditor-General.</p> <p>Clauses 32-39 of the 20th Amendment repeals Article 153A- 153H of the Constitution</p>	<p>As at present, the Auditor-General should be a qualified Auditor appointed by the President subject to the approval of the Constitutional Council. The 20th Amendment would change this to enable any person to be appointed by the President as the Auditor-General. This raises concerns about the transparency of the appointment as well as the suitability of the person to hold office as the Auditor-General.</p> <p>This Clause would amend the requirements for appointment of the Auditor-General reverting it to the position under the 18th Amendment.</p> <p>The 20th Amendment repeals the Articles on the Audit Service Commission, removing the constitutional protection given to the Commission. This</p>

<p>Powers of the Auditor-General Article 154. (1) The Auditor-General shall audit all departments of the Government, <i>the Office of the Secretary to the President, the Office of the Secretary to the Prime Minister</i>, the Offices of the Cabinet of Ministers, the Judicial Services Commission, <i>the Constitutional Council, the Commissions referred to in the Schedule to Article 41B</i>, the Parliamentary Commissioner for Administration, the Secretary-General of Parliament, local authorities, public corporations, business and other undertakings vested in the Government under any written law and <i>companies registered or deemed to be registered under the Companies Act, No. 7 of 2007 in which the Government or a public corporation or local authority holds fifty per centum or more of the shares of that company including the accounts thereof.</i></p>	<p>Clause 40 of the 20th Amendment repeals Article 154 (1) and replaces it with</p> <p>The Auditor-General shall audit the accounts of all departments of Government, the Offices of the Cabinet of Ministers, the Judicial Service Commission, <i>the Public Service Commission, the Provincial Public Service Commissions</i>, the Parliamentary Commissioner for Administration, the Secretary-General of Parliament and <i>the Commissioner of Elections</i>, local authorities, public corporations and business or other undertakings vested in the Government under any written law.</p>	<p>is similar to the position under the 18th Amendment.</p> <p>The Office of the Secretary to the President, the Office of the Secretary to the Prime Minister will no longer constitutionally be required to be audited by the Auditor General. This is similar to the position under the 18th Amendment. This will reduce the transparency and accountability of these offices to the public.</p>
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Impact on powers of the Public Service Commission

<p>Article 54. (1) There shall be a Public Service Commission which shall consist of nine members appointed by the President on the recommendation of the Constitutional Council, of whom not less than three members shall be persons who have had over fifteen years experience as a public officer. The President on the recommendation of the Constitutional Council shall appoint one member as its Chairman.</p>	<p>Clause 8 of the 20th Amendment replaces this Article to read “Article 54 (1) There shall be a Public Service Commission (in this Chapter referred to as the “Commission”) which shall consist of not more than nine members appointed by the President of whom, not less than three members shall be persons who have had over fifteen years experience as public officers. The President shall appoint one of such members as its Chairman.”</p>	<p>The members of the Public Service Commission will be appointed by the President and may be removed by the President without the need for approval by the Parliamentary Council. This would give the President unchecked power over the Commission which would adversely affect the independence of the Commission. This would have the effect of undermining the independence of the public service.</p>
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<p>A member of the Public Service Commission may be removed by the President only with the approval of the Constitutional Council</p> <p>Article 56. (1) The Commission may delegate to a Committee consisting of three persons (not being members of the Commission) appointed by the Commission, the powers of appointment, promotion, transfer, disciplinary control and dismissal of such categories of public officers <i>as are specified by the Commission.</i></p> <p>Article 57. (1) The Commission may delegate to a public officer, subject to such conditions and procedure as may be determined by the Commission, its powers of appointment, promotion, transfer, disciplinary control and dismissal of such category of public officers <i>as are specified by the Commission.</i></p> <p>Article 61A. <i>Subject to the provisions of Article 59 and of Article 126, no court or tribunal shall have power or jurisdiction to inquire into, or pronounce upon or in any manner call in question any order or decision made by the Commission, a Committee, or any public officer, in pursuance of any power or duty conferred or imposed on such</i></p>	<p>Clause 8 of the 20th Amendment allows a member to be removed by the President</p> <p>Clause 9 of the 20th Amendment changes this to read Article 56. (1) The Commission may delegate to a Committee consisting of three persons (not being members of the Commission) appointed by the Commission, the powers of appointment, promotion, transfer, disciplinary control and dismissal of such categories of public officers <i>as are specified by the Cabinet of Ministers.</i></p> <p>Clause 10 of the 20th Amendment changes this to read, Article 57. (1) The Commission may delegate to a public officer, subject to such conditions and procedure as may be determined by the Commission, its powers of appointment, promotion, transfer, disciplinary control and dismissal of such category of public officers <i>as are specified by the Cabinet of Ministers.</i></p> <p>Clause 11 of the 20th Amendment alters this to read, Article 61A. <i>Subject to the provisions of paragraphs (1), (2), (3), (4), and (5) of Article 126, no court or tribunal shall have power or jurisdiction to inquire into, or pronounce upon or in any manner call in question any order or decision made by the Commission, a Committee, or any public officer, in pursuance of any power or duty conferred or imposed on such</i></p>	<p>This Clause reverts the constitutional position on the appointments and removal of members of the Commission to the position adopted in the 18th Amendment.</p>
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Commission, or delegated to a Committee or public officer, under this Chapter or under any other law.	Commission, or delegated to a Committee or public officer, under this Chapter or under any other law.	
Impact on powers of National Procurement Commission		
	<p>Clause 55 of the 20th Amendment Chapter XIXB of the Constitution (Articles 156B to 156H) is hereby repealed.</p>	<p>The National Procurement Commission is abolished.</p> <p>The function of the Commission is to “formulate fair, equitable, transparent, competitive and cost effective procedures and guidelines” for procurements by government institutions.</p> <p>To monitor, report and investigate procurement procedures.</p>
Other Changes		
<p>A person who is;</p> <ul style="list-style-type: none"> ➤ Below the age of 35 years <i>[Article 92(a) of the Constitution]</i> or ➤ A dual citizen <i>[Article 92(b) of the Constitution]</i> <p>Is disqualified from being elected to the office of President.</p>	<p>Clause 18 of the 20th Amendment amended Article 92 of the Constitution</p> <p>by the substitution in paragraph (a) of that Article, for the words “thirty five”,of the word “thirty”</p>	<p>Any person who is above the age of thirty is eligible to contest the Presidential Election.</p> <p>Persons who are dual citizens are no longer disqualified from contesting Presidential elections.</p>

	<p>Clause 56 of the 20th Amendment</p> <p>Article 170 of the Constitution is hereby amended by the repeal of the definition of “public officer” and the substitution therefore of a new definition of a public officer.</p>	<p>In terms of this new definition the following are NO longer considered Public Officers for in Article 170 of the Constitution;</p> <ul style="list-style-type: none"> ➤ Members of the Human Rights Commission of Sri Lanka. ➤ Members of the Commission to Investigate Allegations of Bribery and Corruption. ➤ Members of the Finance Commission. ➤ Members of the Delimitation Commission. ➤ Members of the University Grants Commission. ➤ Members of the Official Languages Commission. ➤ Auditor General. <p>In terms of this new definition the following have been added to the definition of “Public Officers” in Article 170 of the Constitution;</p> <ul style="list-style-type: none"> ➤ The Commissioner - General of Elections ➤ Officers appointed to the Election Commission, by the Election Commission ➤ A member of the President’s staff
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Impact of Transitional Provisions

Clause 57 (3) of the 20th Amendment

Every person holding office on the day immediately preceding the date of commencement of this Act, as the

Chairman or a member of –

(a) the Election Commission;

(b) the Public Service Commission;

(c) the National Police Commission;

(d) the Human Rights Commission of Sri Lanka;

(e) the Commission to Investigate Allegations of Bribery or Corruption;

(f) the Finance Commission; and

(g) the Delimitation Commission,

shall, unless he earlier resigns, dies or is removed from office continue to exercise, perform and discharge the powers, duties and functions of his office **until such date on which the respective Commissions are constituted in accordance with Chapter VIIA of the Constitution.**

Members of these commissions will cease to hold office prior to the end of their term of office once new members are appointed by the Parliamentary Council.