

JAMAICA

No. 17-2011

I assent,

[L.S.]

(Sgd.) P. d. Allen
Governor-General.

August 29, 2011

AN ACT to Establish the Office of Custos Rotulorum.

[The date notified by the Minister]
bringing the Act into operation

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. This Act may be cited as the Custos Rotulorum Act, 2011, and shall come into operation on a day to be appointed by the Minister by notice published in the *Gazette*. Short title and commencement.

2. In this Act— Interpretation.

“Custos” means a Custos Rotulorum appointed in accordance with section 4 or any person appointed in accordance with section 9 to act as Custos Rotulorum;

“Minister” means the Minister responsible for Justices of the Peace;

“Justice” or “Justice of the Peace” has the meaning assigned to it under the Interpretation Act;

“office of Custos” means the office of Custos Rotulorum established by section 3;

“official seal” means the official seal prescribed under section 16 for the use of a Custos;

“parish” in relation to a Custos means the parish in respect of which the Custos is appointed.

Establishment
of office.

3. There is hereby established the office of Custos Rotulorum, to which persons may be appointed in accordance with section 4.

Appointment
of Custos.

4.—(1) A Custos shall be appointed by the Governor-General, on the advice of the Prime Minister.

(2) A person appointed as Custos shall before assuming office, take and subscribe before the Governor-General—

(a) the oath of allegiance referred to in section 7 of the Oaths Act; and

(b) the official oath referred to in section 8 of the Oaths Act.

Tenure of
office of
Custos.

5. Subject to the provisions of this Act, a Custos shall hold office until the age of seventy-five years.

Eligibility for
appointment
as Custos.

6. A person is eligible to be appointed as Custos if the person—

(a) is a Justice of the Peace;

(b) is a Jamaican citizen who has not attained seventy years of age;

(c) is able to read and speak English fluently;

(d) is a resident of the parish in respect of which such appointment is to be made so, however, that, a person to be appointed in respect of Kingston or St. Andrew may be a resident of either of those parishes;

- (e) is one who—
 - (i) displays the highest standard of professionalism and moral and ethical conduct;
 - (ii) commands the respect and confidence of the local community of which that person is a member; and
 - (iii) has given good service to the local community and the wider Jamaica.

7. A person shall be disqualified for appointment as Custos who is—

Disqualifications for appointment as Custos.

- (a) a member of the House of Representatives or the Senate;
- (b) an undischarged bankrupt;
- (c) convicted of any offence involving dishonesty or moral turpitude; or
- (d) either a—
 - (i) party to; or
 - (ii) partner in a firm, director or manager of a company, which to the person's knowledge, is a party to,

any contract with the Government for or on behalf of the public service, unless, prior to such appointment, the person previously disclosed to the Governor-General, the nature of the contract and such interest or the interest of such firm or company therein.

8. An office of Custos shall become vacant—

The Office of Custos, when becomes vacant.

- (a) if the Custos resigns from the office;
- (b) if the Custos' appointment is terminated.

9.—(1) Where a vacancy arises in an office of Custos, the Governor-General may, acting on the advice of the Prime Minister, appoint a person who is eligible by virtue of section 6, to act as Custos until an appointment is made.

Filing of vacancy.

(2) Where by reason of—

- (a) inability to discharge the functions of the office of Custos (whether arising from infirmity of body or mind or any other cause);

(b) absence from Jamaica,

a Custos is unable to perform functions as Custos, the Governor-General, on the advice of the Prime Minister, may appoint a person who is eligible by virtue of section 6, to act as Custos.

Custos shall be deemed to vacate office.

10.—(1) An Office of Custos shall be deemed to be vacated—

- (a) if any circumstances referred to in section 7 arise during that Custos' tenure that, if that person were not Custos, would have, by virtue of that section caused that Custos to be disqualified for appointment;
- (b) if the Custos transfers residence to another parish;
- (c) if the Custos attains the age of seventy-five years, unless specifically requested to continue by the Governor-General on the advice of the Prime Minister in order to—
 - (i) enable the Custos to complete any matter engaged in before attaining that age; or
 - (ii) facilitate the selection of a person for succession as Custos; however, the period of continuation in office shall not exceed two years.

(2) Subsection (1) shall not apply in relation to the circumstances of section 7(d), if the Custos, the firm or company had before entering into the contract, in writing, disclosed to the Governor-General the nature of the contract and the Custos' interest or the interest of the firm or company therein.

Removal from office of Custos.

11.—(1) Subject to subsection (2), a Custos may be removed from office on the following grounds—

- (a) inability to carry out the functions of the office of Custos (whether arising from infirmity of body or mind or any other cause);
- (b) failure to carry out the functions of the office of Custos in a competent manner; or
- (c) misbehaviour.

(2) The Custos shall be removed from office by the Governor-General by instrument under the Broad Seal if the question of the removal from office of the Custos has been referred to a tribunal appointed under subsection (3) and the tribunal has recommended to the Governor-General that the Custos ought to be removed from office on any of the grounds specified in subsection (1).

(3) If the Governor-General decides that the question of removing the Custos from office ought to be investigated, then—

(a) the Governor-General shall appoint a tribunal, which shall consist of—

(i) the Permanent Secretary in the Ministry responsible for Justices of the Peace;

(ii) a retired Judge; and

(iii) a person from civil society selected by the Governor-General;

(b) that tribunal shall enquire into the matter and report on the facts thereof to the Governor-General and recommend whether the Custos ought to be removed from office on any of the grounds specified in subsection (1).

(4) The Commissions of Enquiry Act shall apply in relation to a tribunal appointed under subsection (3), or as the context may require, to the members thereof, as it applies in relation to the Commissions issued to the Chairman and Commissioners appointed under that Act.

(5) Where the question of removing the Custos from office has been referred to a tribunal, the Governor-General, after consultation with the Prime Minister may suspend the Custos from performing the functions of the office and any suspension—

(a) may, at any time, be revoked by the Governor-General after consultation as aforesaid; and

- (b) shall, in any case, cease to have effect if the tribunal advises the Governor-General that the Custos ought not to be removed from office.

Resignation.

12. A Custos may resign from the office of Custos by instrument in writing, addressed to the Governor-General.

Custos shall receive stipend.

13. A Custos shall receive an annual stipend at such rate as may, from time to time, be prescribed by the Minister, with the prior approval of the Cabinet, by order published in the *Gazette*.

Functions of office.

14.—(1) In addition to the functions conferred upon a Custos under the Justices of the Peace (Official Seals) Act and the Justices of the Peace (Appointment and Code of Conduct) Rules 2006 a Custos shall carry out the following functions, in relation to the parish for which the Custos was appointed namely—

- (a) act as the representative of the Governor-General;
- (b) receive the Governor-General when he pays official visits to the parish;
- (c) in the absence of the Governor-General receive—
 - (i) the Sovereign or any member of the Royal Family;
 - (ii) the Prime Minister on an official visit; or
 - (iii) any important personage commended by the Governor-General, who arrives within the precincts of the parish;
- (d) act as Patron of any association of the Justices of the Peace of the parish;
- (e) prepare a roster of the Justices within the parish so that there are sufficient Justices to carry out the Justices functions at each sitting of the Petty Sessions Court;
- (f) meet with the Judge of the Circuit Court appointed to be held in the parish, at the court house at the opening of the session;

- (g) act as Chairman of—
 - (i) the committee in the parish that is responsible for making recommendations to the Minister in regard to suitable persons for appointment as Justices of the Peace;
 - (ii) the Governor-General’s Achievement Awards Committee for the parish;
 - (iii) the Parish Advisory Committee on Local Government Reform;
 - (iv) the Community Consultative Committee for the parish; and
 - (v) the Prime Minister’s Values and Attitudes Committee for the parish;
- (h) act as co-chairman of the Parish Disaster Preparedness Committee; and
- (i) any other functions as are conferred on the Custos under any other law.

(2) The Minister may by order, subject to affirmative resolution, amend the provisions of subsection (1) so as to extend, alter or otherwise modify the functions of the Custos.

15. The office of the Custos shall be located within the main court building in the relevant parish or at such other place as may be provided by the Government. Location of office of the Custos.

16.—(1) Every Custos shall be entrusted with an official seal of such size or specification as may be prescribed by the Minister. Official Seal.

(2) The official seal shall be assigned to the Custos by the Governor-General.

(3) The official seal shall remain in the possession of the Custos during the tenure of the Custos’ office and be used solely in the execution of the functions as Custos.

(4) Every document which is attested to or authenticated by a Custos in the execution of functions as a Custos, shall bear the official seal, the date of execution thereof and the signature of the Custos.

(5) Every Custos who is entrusted with an official seal shall—

- (a) preserve and maintain its safe custody; and
- (b) report to the Governor-General any damage to, destruction, loss or theft of the seal, as soon as is reasonably practicable.

Official seal,
return of.

17.—(1) A Custos shall return to the Governor-General the official seal, where—

- (a) the Custos retires from office, resigns or is removed from office; or
- (b) the Custos is directed to do so by the Governor-General,

within three days of the date of such retirement, removal, resignation or direction, as the case may be.

(2) On the death of a Custos, the executor, administrator, personal representative or any person having charge of the affairs of such Custos, shall forthwith return the official seal entrusted to that Custos, to the Governor-General.

Annual
Report.

18.—(1) Every Custos shall submit to the Governor-General and the Minister an annual report in January of each year, of activities in relation to the year immediately preceding.

(2) The annual report referred to in subsection (1), shall include—

- (a) the register of Justices in the parish (referred to in section 7 of the Justices of the Peace (Official Seals) Act) indicating—
 - (i) appointments;
 - (ii) resignations;
 - (iii) removals; and
 - (iv) death,

with respect to Justices of the Peace during the year;

- (b) the activities in the parish in which the Custos is involved;
- (c) a summary of the major projects or plans that are taking place in the parish;
- (d) a statement as to the adequacy of the Justices of the Peace in the parish to serve the needs of the parish.

19.—(1) The Minister may make regulations generally for giving effect to the purposes and provisions of this Act and in particular may make regulations for prescribing the size and specification of official seals and the manner of affixing, impressing or subscribing them on documents. Regulations.

(2) Regulations made under subsection (1), may provide for the imposition of penalties on summary conviction in a Resident Magistrate's Court not exceeding a fine of five hundred thousand dollars or imprisonment for a term not exceeding six months or of both such fine and imprisonment.

20. The Minister may by order subject to affirmative resolution amend any monetary penalty prescribed in or under this Act. Minister may vary monetary award or penalty.

21.—(1) A Custos who— Offences and penalties.

- (a) uses an official seal for an unlawful purpose;
- (b) allows any other person to take possession of or use an official seal for any fraudulent purpose; or
- (c) uses an official seal after that Custos resigns, retires from the office or is removed from office by the Governor-General,

commits an offence and is liable on summary conviction in a Resident Magistrate's Court to, a fine not exceeding five hundred thousand dollars or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

(2) Any person who—

- (a) alters, duplicates or tampers with an official seal;
- (b) uses an official seal without lawful authority;
- (c) is found in unlawful possession of an official seal;
- (d) falsely holds himself out to be the rightful possessor of an official seal;
- (e) parts with possession of an official seal for an unlawful purpose;

- (f) destroys, makes away with, or by willful neglect, allows any person to obtain possession of an official seal;
- (g) being a Custos, fails to return the official seal upon retirement or resignation from office or revocation of appointment; or
- (h) being a person having charge of the official seal pursuant to section 17 (2), upon the death of the assigned Custos fails to return the official seal,

commits an offence and shall be liable on summary conviction in a Resident Magistrate's Court, to a fine not exceeding five hundred thousand dollars or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

Passed in the Senate this 17th day of June, 2011 with (4) amendments.

OSWALD G. HARDING, O.J., C.D., Q.C.
President.

Passed in the House of Representatives this 12th day of July, 2011 with two (2) amendments.

MARISA DALRYMPLE PHILIBERT
Speaker.

On the 22nd day of July, 2011 the Senate agreed to the amendments made by the House of Representatives.

OSWALD G. HARDING, O.J., C.D., Q.C.
President.

This printed impression has been carefully compared by me with the authenticated impression of the foregoing Act, and has been found by me to be a true and correct printed copy of the said Act.

Clerk to the Houses of Parliament.