

## **TRANSLATION OF THE OFFICIAL PUBLICATION OF SINT MAARTEN (AB 2010, GT no. 10)**

### **EXPLANATORY MEMORANDUM**

#### **1. General section**

The will of the people is expressed in direct, regular, free and confidential parliamentary elections. This principle, as well as the right to vote laid down in Article 24 of the Constitution and a number of provisions in Chapter 4 of the Constitution concerning the election of Members of Parliament, form the basis for this draft Ordinance on elections of the country of Sint Maarten.

According to Article 55(1) of the draft Constitution, further rules will be laid down by national ordinance in relation to the right to vote and to the elections. For the purpose of drawing up this draft Ordinance on elections, no use could be made of the possibility offered in the draft National ordinance general transitional provisions to adopt the Netherlands Antillean Election Regulations or the virtually identical Election Regulations for the Island Council of Sint Maarten. Even an amended adoption via the draft National ordinance Special Transitional Provisions did not suffice, because the number of changes would have become too high.

The Netherlands Antillean Election Regulations, the Election Regulations of the Island Council of Sint Maarten and in particular, the Ordinance on elections of Aruba (AB 1987, 110, as last amended by AB 2001, 100), as they were adopted in connection with Aruba acquiring the status of a country within the Kingdom, were all used for the design of this draft national ordinance. After all, the country of Sint Maarten will be structured in the same way as Aruba, in the sense that there will be only one administrative tier and the national government has and maintains direct contacts with the public and businesses.

#### **2. Main points of the draft**

No essential changes have been made in this draft in relation to the main elements of the right to vote, such as the nomination of candidates, the election system, the distribution of seats and membership of Parliament, in comparison with the right to vote for Parliament in both the Netherlands Antilles and Aruba. This draft, too, is based on a system of lists, not on a system of persons. Candidates are nominated via the lists that are drawn up by the political parties taking part in an election. The lists must be handed in to the chairman of the central electoral committee on the date for the nomination of candidates. A new element is that the list is submitted together with the proof of registration with the Electoral Council, within the meaning of Article 24(1) of the National ordinance registration and finances of political parties. The core of that draft is that political parties may only take part in the parliamentary elections if they are registered with the Electoral Council.

The adhesion procedure is also included: parties that take part in the elections must deposit a sum and their list of candidates must be supported by a number of voters. The central electoral committee decides on the validity of the lists submitted and whether the persons named in the lists qualify to stand for election.

In line with the draft Constitution, the grounds for exclusion from the right to vote in this draft are more limited than in the Constitution of the Netherlands Antilles. Thus disenfranchisement for lawful deprivation of liberty and placement under tutelage has been withdrawn. In connection with the character of the right to vote as a constitutional right, these restrictions are too broad (see further the explanation of Article 48 of the draft Constitution).

Like the Netherlands Antillean Election Regulations, this draft, in line with Article 47 of the draft Constitution, is based on a system of proportional representation. Every political party is assigned a number of seats in proportion to the number of votes cast for that political party. A proportional representation system does the greatest justice to the principle of representativeness. The seats are assigned by means of the electoral quota: the number of votes enough to win one seat, or the total number of votes cast, the voting figure, divided by the number of seats. The residual seats are assigned in accordance with the system of the highest averages. For the allocation of seats to

---

*This is an English translation of the Dutch source text.*

*In the event of any discrepancy between the Dutch language version and the translation, and in case of any disputes, the Dutch version prevails. No rights can be derived from the English translation.*

*October 2013*

persons named in the lists, the system that has been laid down in the Election Ordinance for the Island Territory of Sint Maarten since 1999 is used. That system that naturally, the persons on a list who have attained the list quota will win a seat in Parliament and that in order to fill the other seats assigned to the list, the persons on the list will be ranked in order of the number of votes that they won. There is no scope for preferential votes in this system or for 'passing down' votes to persons on the list who did not attain the list quota. The Ordinance on elections of the Netherlands Antilles and the Ordinance on elections of Aruba are based on the latter system. The elected representative must notify the chairman of the central electoral committee whether he accepts the election or not. The notification of the chairman and the acceptance of the person concerned together form the credentials. These are examined by a parliamentary committee.

In this draft, the Minister of General Affairs is designated as the minister responsible for everything relating to the preparations for the elections and to the elections themselves. The Department of Population Affairs, which is part of the Ministry of General Affairs, is designated as the service responsible for implementing the various regulations. Naturally, the national population database of this service forms the basis for the electoral roll which is accessible electronically. A request for dismissal, in line with modern constitutional relationships, is addressed to the President of Parliament, not to the government, as laid down in the older regulations.

The draft is consistent with the draft National ordinance registration and finances of political parties, including in relation to the term 'political party'. The use of voting machines has also been taken into account. Recent developments concerning the reliability and confidentiality sensitivity of a type of machine used previously on several occasions do not prejudice the regulations included in this draft concerning the use of voting machines. Sound and reliable equipment is assumed. Attention is called to Article 72. This Article prohibits the development of activities in polling stations aimed at influencing voters. This regulation is not included in the Antillean and Aruban legislation, but is derived from the Dutch Election Act. Furthermore, Title IV of the Criminal Code includes 'criminal offences concerning the exercise of constitutional rights and obligations', a number of penal provisions serving to ensure that elections are conducted fairly, such as penalties for buying votes through gifts or pledges (Article 132 of the Criminal Code).

In the older legislation, matters such as the shape of the ballot box, the layout of each polling station and the model of the ballot papers to be used were regulated in detail at the level of the national ordinance. In this draft, a number of these more detailed developments are assigned to the Minister of General Affairs, as this does not concern the main points. In that regard, a number of national decrees, containing general measures, will be created.

### **3. Article by Article Section**

#### *Article 1*

The definition of the term 'resident' in this draft national ordinance has been updated in comparison with the Ordinance on elections of the Netherlands Antilles (hereinafter referred to as the 'NA'). The definition of the term 'political party' is consistent with that in the draft National ordinance registration and finances of political parties.

The second paragraph assumes that a person with an address registered in the national population database of Sint Maarten is actually domiciled in Sint Maarten and has been adopted from Article B 4(2) of the Dutch Election Act. Obviously, this concerns actual domicile in the country of Sint Maarten.

#### *Article 2*

This provision provides that Members of Parliament are directly elected by persons who, on the thirtieth day before the nominations, are residents of Sint Maarten, hold Dutch nationality and have reached the age of 18 on the voting date. Dutch nationality is thus required on the date on which the candidates are nominated. The age limit and the requirement of residency and Dutch nationality for exercising the right to vote are consistent with Article 46 of the Charter for the Kingdom and Articles 23 and 48 of the Constitution. These requirements are also consistent with

---

*This is an English translation of the Dutch source text.*

*In the event of any discrepancy between the Dutch language version and the translation, and in case of any disputes, the Dutch version prevails. No rights can be derived from the English translation.*

*October 2013*

the Code of good practice in electoral matters of the European Commission for democracy through law (Venice Commission). The Article is derived from Article 3 of the Aruban Ordinance on elections.

#### *Article 3*

This Article provides for persons who have been disenfranchised and refers to Article 48(2) of the draft Constitution of Sint Maarten. According to that constitutional provision, persons who have been given a custodial sentence of at least one year and have also been disenfranchised in a final court decision for an offence designated by national ordinance are excluded from voting. In connection with the increased importance of the right to vote as a constitutional right, the grounds for exclusion such as vagrancy, begging and a conviction for public drunkenness, which are still included in the Constitution of the Netherlands Antilles, have been withdrawn. In the meantime, the country of the Netherlands Antilles is preparing a draft national ordinance to amend the grounds in the Constitution for disenfranchisement. See also the notes to Article 48 of the draft Constitution.

#### *Articles 4 up to and including 11*

Naturally, the NA Ordinance on elections assumes the existence of island territories. For that reason, the formulation of these Articles is in principle based on the Aruban Ordinance on elections, but where possible, that of the NA has also been taken into account. Article 5 of the draft provides that the electoral register shall be kept in the form of a file that is accessible electronically. As in the remainder of this draft, these Articles provide that the Minister of General Affairs is the minister with political responsibility for the preparation of elections and for elections themselves. Article 6 includes the text of the NA Ordinance on elections and makes no provision for the situation in which the voter's address is unknown, as the Aruban Ordinance on elections does. Articles 7 up to and including 11 are largely similar to the corresponding Articles of the Ordinance on elections of the NA and those of Aruba. Naturally, where the NA Ordinance on elections still refers to the Administrative Board, reference is made here to the Minister of General Affairs.

#### *Article 12*

Articles 12 to 20 concern the institution and membership of the central electoral committee. The composition of the central electoral committee and the appointment procedure for the chairman, the deputy chairman and the members differs from the procedures laid down in the Ordinances on elections of the NA and Aruba. The procedure laid down in Article 12 aims to promote preparation and implementation of elections independently of politics and is derived from the regulation concerning the appointment and dismissal of members of the Electoral Council pursuant to the draft National ordinance registration and finances of political parties. The chairman, the deputy chairman and the members and deputy members are appointed by national decree on the nomination of the appointments committee. The appointments committee consists of the president of the Common Court of Justice of Aruba, Curacao, and Sint Maarten, and Bonaire, Sint Eustatius and Saba, the deputy chairman of the Council of Advice and the chairman of the General Audit Chamber. They are appointed for a term of seven years and may be reappointed on one occasion. The chairman, deputy chairman and members will be selected partly on the basis of their knowledge of the Ordinance on elections and experience in preparing and organising elections.

#### *Articles 13, 14 and 15*

Article 13 contains a number of incompatibilities, including membership of the Electoral Council pursuant to the draft National ordinance registration and finances of political parties. Article 14 makes provision for prohibited kinship relationships.

#### *Articles 16, 17 and 18*

These Articles contain the grounds for dismissal and suspension of members of the central electoral committee. Suspension and dismissal take place by national decree, after the appointments committee has issued its advice. The Code of good practice in electoral matters of the European Commission for democracy through law (Venice Commission 2003) provides that 'recall of members of electoral commissions is permissible, provided that the grounds are clearly and restrictedly specified in the law.'

---

*This is an English translation of the Dutch source text.*

*In the event of any discrepancy between the Dutch language version and the translation, and in case of any disputes, the Dutch version prevails. No rights can be derived from the English translation.*

*October 2013*

#### *Article 19*

The remuneration of the five members and two deputy members of the central electoral committee is laid down by national decree, containing general measures. This will concern attendance fees. The decree may take account of the consumer price index figure.

#### *Article 20*

In accordance with the recommendation in the Code of good practice on electoral matters, a qualified majority of two thirds is required for decisions of the central electoral committee. This means that with five members, four votes in favour are needed in order to carry a resolution. Consensus is preferred.

#### *Article 21*

The NA Ordinance on elections assumes that the date of nominations will be laid down by national decree, including after the dissolution of Parliament. Like the Aruban Ordinance on elections, this Article lays down a more objective, more regulated standard for that date: between the ninetieth and the eightieth day before the end of the parliamentary term, or before the date on which Parliament is dissolved.

#### *Article 22*

This Article contains the term 'registered political party', in accordance with the draft National ordinance registration and finances of political parties. This term is not included in the NA Ordinances on elections, although a draft national ordinance in that regard is now before Parliament.

The Article also provides that the submission of the list shall be accompanied by proof of registration with the Electoral Council as referred to in Article 24(1) of the draft National ordinance registration and finances of political parties. According to that draft, political parties may only take part in the elections for Members of Parliament if they comply with the regulations of section 3 of that national ordinance, including registration with the Electoral Council.

#### *Article 23*

According to Article 16 of the former Netherlands Antilles Election Regulations, every candidate list must be supported by a number of voters equal to at least one per cent of the sum of the voting figures recorded by each central electoral committee in the last parliamentary elections. This regulation on support, together with the deposit of ANG 2,000 provided for in Article 18, serves to counter submissions for participation in the elections that are made too lightly. This is not deemed to conflict with Article 25 of the International Covenant on Civil and Political Rights (ICCPR) or Article 3 of the First Protocol of the European Human Rights Convention, which prescribe free and confidential elections (GEA Curacao, 27 November 1997, TAR-Justicia 1998, No. 3, pgs. 187-189). The European Human Rights Commission also regards it as acceptable to impose certain conditions for the admission of a group to elections as a political party, provided that this serves the interests of a good structure of the elections which is transparent to the voters and does not restrict free choice. The Commission regards the requirement of submitting a certain number of signatures as justified, because groups that have any chance in the elections can easily comply with such a requirement, while this will exclude groups that apparently will not be able to bear any political responsibility.

The public character of the support procedure has led to court proceedings in which the court ruled that it is necessary to build in assurances that efforts will be made to protect the confidentiality of the names of supporting parties. This concerns a form of pre-election, to which Article 25 of the ICCPR applies (GEA Curacao, 17 December 1990, AvR 176-178). The current regulation concerning support for voter lists of Sint Maarten is adopted here.

#### *Articles 22 up to and including 27*

Although their formulation is not always the same, the content of these provisions does not differ substantively from the corresponding provisions of the Ordinances on elections of the NA and Aruba, albeit that the possibility of voting by proxy is not permitted in accordance with current practice in Sint Maarten, in order to avoid the risk of abuse.

---

*This is an English translation of the Dutch source text.*

*In the event of any discrepancy between the Dutch language version and the translation, and in case of any disputes, the Dutch version prevails. No rights can be derived from the English translation.*

*October 2013*

*Article 29*

This Article requires the provision for public inspection of the lists just like Article 22 of the NA Ordinance on elections, but has a more modern formulation.

*Article 30*

The term 'political party' is also included here, in contrast to the NA Ordinance on elections. In other respects, the content of the provision is the same.

*Article 31*

This provision involves an adoption of the Antillean provision, with the difference that an extra validity requirement is included, concerning the description of the political groups in the list.

*Articles 32 up to and including 35*

The content of these Articles is consistent with the corresponding Articles of the Ordinances on elections of the NA and those of Aruba. These provisions regulate the verification of the validity of the candidate lists and the possibility of filing an appeal against the relevant decisions of the central electoral committee.

*Articles 36 up to and including 38*

These provisions regulate the numbering and the assignment of a colour to a list. The publication of the lists is also regulated. The substance of these provisions is consistent with that of the Ordinances on elections of the NA and Aruba.

*Articles 39 and 40*

The substance of these provisions is consistent with that of the corresponding provisions of the Ordinances on elections of the NA and Aruba. Article 33(2) of the NA Ordinance on elections regulates that in the case of voting following the dissolution of Parliament, the Governor sets the date. This national ordinance does not contain such a regulation.

*Articles 41 and 42*

These provisions regulate the polling districts and polling stations. They are consistent with those of the other Ordinances on elections.

*Article 43*

This Article regulates the call to vote and the polling cards.

*Articles 44 up to and including 49*

The content of these Articles speaks for itself. It is consistent with that of the Ordinances on elections of the NA and Aruba.

*Article 50*

This provision is new in relation to the older Ordinances on elections and is derived from the Dutch Election Act. Where there is a need for such a provision in the Netherlands, such a need will also apply for Sint Maarten. Furthermore, Article 53(2) of the draft Constitution provides that rules will be laid down by national ordinance to promote the balanced progress of elections. This provision is an implementation of that requirement.

*Articles 51 up to and including 55*

These Articles lay down rules concerning the designation of polling stations, their layout and the documents present. While the Ordinances on elections of the NA and Aruba still lay down rules in the ordinance itself regarding the design of polling stations and polling booths and their layout, these Articles make it possible for the details concerning the design and layout to be developed in a national decree, containing general measures. In other respects, the content of these Articles speaks for itself and is consistent with the corresponding Articles of the other Ordinances on elections.

---

*This is an English translation of the Dutch source text.*

*In the event of any discrepancy between the Dutch language version and the translation, and in case of any disputes, the Dutch version prevails. No rights can be derived from the English translation.*

*October 2013*

#### *Article 56*

Paragraph 1 of this provision states what must in any event be included in a ballot paper. According to paragraph 2, the further development and modelling of ballot papers can be regulated by ministerial regulation. The corresponding provisions of the Ordinances on elections of the NA and Aruba provide more details of the design of ballot papers.

#### *Articles 59 up to and including 64*

These provisions regulate the use of voting machines. The provisions are related to the same provisions of the NA Ordinance on elections, which have recently been amended for that purpose. The Aruban Ordinance on elections also regulates the use of voting machines in more or less the same way. Article 64 provides that everything that is not regulated in the national ordinance with regard to the use of voting machines shall be regulated by national decree, containing general measures.

#### *Articles 64 up to and including 70*

The content of these Articles is consistent with the corresponding Articles of the Ordinances on elections of the NA and Aruba.

#### *Article 71*

The older Ordinances on elections also prescribe in this 'order' Article that voters must enter the polling stations unarmed. This provision is not included in Article 71 because unarmed attendance is self-evident; after all, possessing arms is prohibited. In other respects, the Article is an adoption of the ordinances of the NA and Aruba.

#### *Article 72*

The provision that no activities directed at influencing the choice of voters may take place in the polling stations is derived from the Dutch Election Act. Its inclusion in this draft is meaningful, partly in view of the constitutional obligation of Article 53(2) of the draft Constitution to impose rules to promote the balanced progress of elections.

#### *Article 73*

The chairman of the electoral committee is responsible for public order. If there is a threat of disorder, he may request the Minister of Justice for the assistance of the police. In observance of the following Article, he may suspend the session of the electoral committee. The request to the Minister of Justice for support is drawn from the Dutch Election Act. It develops the request for support formulated in Article 65(2), of the NA Ordinance on elections in a broader and more modern manner.

#### *Article 74*

If disorder occurs in a polling station to the extent that proper continuation of the session is no longer possible, the chairman of the electoral committee may suspend the session. The Ordinances on elections of the NA (Articles 66, 67 and 68) and Aruba (Articles 67, 68 and 69) provide in detail for the actions that members of the electoral committee should take if a session has to be suspended. According to this draft, these further regulations should be laid down in a national decree, containing general measures.

#### *Articles 75 up to and including 80*

The content of these Articles is consistent with the formulation of the corresponding Articles of the Ordinances on elections of the NA and Aruba.

#### *Article 81*

Paragraph 2, concerning the invalidity of votes, is derived from the Dutch Election Act and states which ballot papers are invalid more compactly and more unambiguously than the formulation in Article 75(2), 75(3) and 75(4) of the NA Ordinance on elections and Article 76(2), 76(3) and 76(4) of the Aruban Ordinance on elections.

---

*This is an English translation of the Dutch source text.*

*In the event of any discrepancy between the Dutch language version and the translation, and in case of any disputes, the Dutch version prevails. No rights can be derived from the English translation.*

*October 2013*

*Articles 82 up to and including 86*

The content of these Articles is consistent with that of the corresponding Articles of the Ordinances on elections of the NA and Aruba.

*Article 87*

This Article provides a compacter and more modern formulation of the provisions of Articles 81 and 82 of the NA Ordinance on elections. In the event of uncontrollable disorder, the chairman can request (police) assistance of the Minister of Justice.

*Articles 86 up to and including 91*

The content of these Articles is consistent with that of the corresponding Articles of the Ordinances on elections of the NA and Aruba.

*Article 92*

The NA Ordinance on elections provides in detail for the manner of sealing documents, ballot boxes and envelopes. This Article provides that a seal showing the coat of arms of Sint Maarten should be used for sealing.

*Articles 93 up to and including 97*

The content of these Articles is consistent with that of the corresponding Articles of the Ordinances on elections of the NA and Aruba.

*Article 98*

In 1999, Article 104 of the Election Regulations of the Island Territory of Sint Maarten was amended, in the sense that in filling the seats assigned to each list, the candidates who won a number of votes equal to or higher than the electoral quota naturally qualify, and in addition, the candidates qualify who did not attain the list quota, in order of the number of votes that they won. Only the number of votes that a candidate attained determines whether he or she qualifies to hold a seat assigned to the list, and not, directly, the position held by a candidate on that list. This system does not, therefore, work by passing on the remaining votes after the list quota to the next candidate appearing on the list, nor by assigning a position on the basis of 'preferential votes'. In this draft, this system, which was introduced earlier in 1999 for the election of the Island Council of the island territory Sint Maarten, has been adopted. Paragraph 2 of this Article is a translation of this. In that regard, the provisions of Articles 93(2), 94, 95 and 96 of the NA Ordinance on elections have not been adopted.

*Articles 100 up to and including 103*

In the formulation of these Articles, particular note was taken of Articles 98, 101, 102 and 103 of the NA Ordinance on elections and of Articles 99 up to and including 102 of the Aruban Ordinance on elections.

*Articles 104 up to and including 107*

The content of these Articles concerning the credentials of elected persons is consistent with that of the corresponding Articles of the NA Ordinance on elections (Articles 104 to 107).

*Article 108*

Pursuant to Article 54 of the draft Constitution, Parliament examines the credentials of its newly-elected members and settles disputes concerning the credentials or that arise in relation to the election itself, in observance of the rules to be laid down by national ordinance. According to the Ordinances on elections of the NA and Aruba, too, Parliament not only examines the credentials but also settles disputes concerning the credentials or the election itself. Disputes concerning the election itself are settled after an appeal to the central electoral committee and the courts.

*Article 120*

A Member of Parliament who has been admitted may resign at any time. According to the NA Ordinance on elections, the resignation is submitted in writing to the Governor and according to the Aruban Ordinance on elections, to the government. This Article regulates that a Member of Parliament who has been admitted may resign at any time, through written notification of the

---

*This is an English translation of the Dutch source text.*

*In the event of any discrepancy between the Dutch language version and the translation, and in case of any disputes, the Dutch version prevails. No rights can be derived from the English translation.*

*October 2013*

President of Parliament. This procedure is more consistent with modern constitutional relationships in which Parliament can take its own position in every respect in relation to the government and the inviolable head of the government.

*Articles 121 and 122*

The content of these Articles is consistent with that of the corresponding Articles of the Ordinances on elections of the NA and Aruba.

*Articles 123 up to and including 132*

The content of these Articles concerning the penal provisions speaks for itself. They are consistent with the corresponding penal provisions of the Ordinances on elections of the NA and Aruba.

*Article 136*

The definition provided in Article 1(d) of this draft is consistent with that of the draft National ordinance registration and finances of political parties. This means that a political party must be formed as an association, by notarised deed. In connection with this, existing political parties are granted a period of six months in this Article to be able to comply with that requirement.

\*\*\*