

**ANGUILLA CONSTITUTIONAL AND ELECTORAL REFORM COMMITTEE  
PROPOSALS FOR CONSTITUTIONAL AND ELECTORAL REFORM**

**Committee Members**

**Attended at least one meeting**

Don Mitchell, CBE, QC, Chairperson  
John Benjamin, QC  
Hon Evalie Bradley  
Keesha Carty  
Arielle Gaskin  
Marie Horsford  
Colville Petty, OBE  
Stanley Reid, OBE  
Allister Richardson  
Kristy Richardson-Harrigan  
Conrad Rogers  
Stachel Warner

**Did not attend meetings**

Thomas Astaphan, QC	[Professional engagements]
Kyle Hodge	[Resigned for personal reasons]
Joyce Kentish, QC	[Professional engagements]
Lolita Richardson	[Invited, but declined to participate]

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**REPORT**  
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Dated 31 January 2017

Revised 31 March 2017

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## INTRODUCTION

The Committee was appointed by the Executive Council in September 2015 with a mandate to review previous proposals for reform of the 1982 Constitution of Anguilla,<sup>1</sup> to hold such further public consultations it considered appropriate, and to make recommendations to the Executive Council on both constitutional and electoral reform.

Any reform of the 1982 Constitution will need to be given effect to by way of an Order in Council made under the Anguilla Act, 1980.<sup>2</sup> Reform of Anguilla's electoral laws and systems requires only a local Act of the Anguilla House of Assembly, and does not depend on any alteration of the Constitution or the intervention of an Order in Council.

Throughout the years 2015 and 2016, the Committee met, at first bi-weekly and then weekly, to discuss and agree the various proposals that came out of our public discussions and private submissions made to it. All members of the Committee were circulated with copies of every discussion document and the various drafts as they evolved. Although many did not attend Committee meetings, some contributed by way of emails, written memoranda and in face to face meetings. So far as the time of the Committee was structured, the first two-thirds was devoted to working on constitutional proposals, while the last third involved discussions and meetings concerning a new Bill for an Elections Act and Regulations and a new Bill for an Electoral Boundaries Commission Act.

The Committee held well-publicised public meetings in every political constituency in the island. Persons who had an interest in constitutional or electoral reform came out to ask questions and to offer their contributions. Interested persons also wrote in to the Committee, as they were invited to do, with their views and ideas for reform. The Committee held regular radio call-ins on all the radio stations that had an interest in hosting the Committee. On these radio talk-shows the members of the Committee engaging in this exercise interacted with persons who called in to offer their

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<sup>1</sup> [Anguilla Constitution Order 1982.pdf](#)

<sup>2</sup> <http://www.legislation.gov.uk/ukpga/1980/67/contents>

suggestions and comments. Additionally, members of the Committee held meetings with NGOs and other groups, including the Councils of the two main political parties on the island. Members of the public, including several members of the Bar Association, submitted in writing their comments and suggestions which the Committee were happy to take into consideration, and many of which were adopted.

While the scheduled public meetings in each of the districts were sparsely attended, the Committee was able to communicate with the public through the mechanisms described above. The Committee is satisfied that based on the public input received, particularly on amendments and improvements that ought to be made to the Recommendations contained in the 2006 Report of the Constitutional and Electoral Reform Commission,<sup>3</sup> that its draft new Constitution here proposed meets with the support of a majority of the Anguillians who engaged with the Committee and its members. It was particularly helpful that the Committee consisted of representatives of every political movement and all the senior lawyers in Anguilla. We consider that we did everything in our power to educate the public on the issues and to engage everyone who had an interest in becoming involved in the project. We can think of nothing more that we could reasonably have done that we failed to do. We list our public information and education exercises at the Appendix below.

The Committee has now concluded its work and submits its proposals for reform in the form of the attached draft Constitution. Mr TWR Astaphan QC does not agree with the majority's draft Constitution, and his latest recommendation is placed as an Appendix (page 121) to the majority's draft.

We also enclose our proposals for electoral reform in the form of a Bill for a new Elections Act. This is not a polished and finished Bill. We recognise that further work will need to be done to it by the expert draftspersons in the Attorney-General's Chambers. It is a hybrid of the BVI Elections Act and the Anguilla Elections Act and various Regulations. There may remain contradictions and duplications and inaccurate cross references that we did not find and correct. However, the Committee considered

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<sup>3</sup> [http://www.gov.ai/constitutional\\_reform.php](http://www.gov.ai/constitutional_reform.php)

that we had spent more than sufficient time on this exercise, and it was time to make our report and conclusions known. We, therefore, view our Bill for an Elections Act as being in the nature of drafting instructions to the Attorney-General's Chambers once it is approved in principle by Executive Council. This Bill should be given priority as the year 2017 is intended to be the enumeration year for a new Voters' List.

Finally, the new Elections Act cannot be submitted to the House of Assembly unless and until an Electoral Boundaries Commission has been established and has reported to the House of Assembly on recommended new boundaries for the proposed nine local electoral districts and four Island-wide electoral districts, and the House of Assembly has approved the Commission's report. A priority must be the establishing of the Commission and the prompt completion of its work so that the new Elections Act is passed and ready to be brought into action at the next general elections. We have therefore drafted a proposed Bill for an Electoral Boundaries Commission along the lines of the Cayman Islands provision, which seems to us to be adequate for our purposes.

## APPENDIX TO INTRODUCTION

### Public Consultations Timeline

#### 2015

##### Oct

21 Published to all media houses **Press Release No 1** on the work of the Committee

##### Dec

16 Presented **Executive Council** with the First Report on progress and plans

#### 2016

##### Feb

16 Attended on Wycliffe Richardson's **ATV 3** to discuss draft constitutional ideas and proposals

##### Apr

6 Attended at **PAC Workshop** for visiting and local parliamentarians making presentation

12 Delivered copy of the PAC presentation to **ATV 3** for news release

12 Delivered copy of the discussion Draft to **ATV 3** for news release

12 Delivered copy of Draft to Mr Pickering of **Chamber of Commerce** for discussion with members

##### July

12. Emailed Ken Hodge with Discussion Draft for publishing on **Gov't Website**

12. Emailed Merline Barrett with Draft for all members of the **Bar Association**

12. Emailed Colin Hazel with Draft for publishing on **AL-HCS website**

12. Emailed Bren Romney with Draft for circulating to youth groups of the **National Youth Council**

12. Emailed Clemvio Hodge with Draft for **Youth Parliamentarians**

12. Emailed Lenox (Joash) Proctor with Draft for circulating to the Members of the **House of Assembly** and placing on the House of Assembly website

12. Emailed Arielle Gaskin with Draft for members of the **AL-HCS Debating Society**

12. Emailed Bernard Wattlely with Draft for placing in the **Public Library**

12. Emailed Phyllis Fleming-Banks with Draft for the Open Campus of the **University of the West Indies** and for posting on the website

12. Emailed Dr Leroy Hill with Draft for the noticeboard of the **Community College**

12. Emailed **Anguilla Chamber of Commerce** with copy of Draft for members

12. Emailed Farrah Banks with Draft for the **Department of Information**

12. Emailed **Heartbeat Radio** with Draft with draft for news programmes

12. Emailed Wycliffe Richardson of **ATV3** with Draft for news programmes

12. Emailed **Upbeat Radio** with Draft for news programmes

12. Emailed **Governor** with copy of Draft
12. Emailed **Deputy Governor** with Draft for circulating to Public Service
12. Emailed A-G with Draft for circulating in the **A-G's Chambers**
12. Emailed Nat Hodge of **The Anguillian Newspaper** with Draft
12. Emailed Brenda Carty of **The Herald Newspaper** with Draft
12. Emailed Abner Brooks of **Klass FM** with Draft
12. Emailed Leroy Richardson of **Kool FM** with Draft
12. Emailed Sanford Richardson with Draft for **Department of Social Development**
12. Emailed Clive (Frankie) Smith with Draft for circulating to the various **Churches**
12. Emailed PS Chanelle Petty-Barrett with Draft for **Ministry of Education**
12. Emailed Dr Bonnie Richardson-Lake with Draft for **Ministry of Home Affairs**
12. Emailed PS Mervwn (Foster) Rogers with Draft for **Chief Minister's Ministry**
12. Emailed PS Dr Aidan Harrigan with Draft for **Ministry of Finance**
12. Emailed PS Aurjul Wilson with Draft for **Ministry of Home Affairs**
12. Emailed PS Kathleen Rogers with Draft for **Department of Finance**
12. Emailed CEO Rhonda Connor with Draft for **Department of Education**
12. Emailed Dr Wycliffe Fahie re-sending Draft for **Ministry of Finance** (Dr Harrigan on vacation)
12. Circulated to all media houses **Press Release No 2** for publication
12. Emailed Timothy Hodge of radio talk show **Conversations** with Draft for public discussion
12. Emailed John Benjamin QC of **Real Talk** with Draft for Public discussion
12. Emailed Ivor Hodge of **The Zone** with Draft for public discussion
12. Emailed Pastor Philip Gumbs of **Social Solutions** with Draft for public discussion
12. Emailed Elkin Richardson of **To The Point** with Draft for public discussion
12. Emailed Josephine Gumbs-Connor of **Conversations with Josephine** with Draft for public discussion
12. Emailed Haydn Hughes of the radio talk show **On da Spot** with Draft for discussion
16. Appeared on **The Mayor's Show** to discuss proposals
18. Appeared on Elkin Richardson's show **To The Point** to discuss the proposals
23. Appeared on the **Mayor's Show** to discuss the proposals
26. Appeared on Mark Romney's **Up Front programme** on Radio Anguilla
26. Circulated to all media houses **Press Release No 3** for publication

## **August**

10. Arranged a news item with Felicia Hennis of **Radio Anguilla** for the daily news bulletin concerning the public consultations and public meetings that the Committee plans to hold over the period up to October
11. Appeared on Haydn Hughes' **On da Spot** call in programme to discuss the proposals



13. Appeared on Pastor Philip's **Social Solutions** radio programme to discuss the proposals
17. Appeared on Brother Lee's **Talk De Talk** radio programme to discuss the proposals
20. Appeared on Pastor Philip's **Social Solutions** radio programme to continue discussing the proposals
21. Attended at the **AUF Party General Council** meeting at Dorack's Place to discuss the proposals
27. Appeared on the **Mayor's Show** radio call-in programme at Kool FM to discover the proposals
31. Attended at a meeting of the **AUM Party Council** at The World Harvest Assembly at The Quarter to discuss the proposals

### Sept

6. Emailed all media houses with **Press Release No 6** for publication
7. Emailed Draft to Bishop Errol Brooks of the **Anglican Church** for discussion
8. **Public meeting** held at Church of God Holiness discussing Chapter 9
21. Emailed all media houses with **Press Release No 6** for publication
22. **Public meeting** held at Central Baptist Church discussing Chapter 10
22. Emailed all media houses with **Press Release No 7** for publication
23. Emailed all media houses with **Press Release No 4** for publication
29. **Public meeting** held at Bethel Methodist Church discussing Chapters 3,4,5

### Oct

6. **Public meeting** held at Blowing Point Christian Fellowship Church discussing Chapter 1
11. Emailed **all media houses** requesting publication of reminders about public meeting for 13 October
13. **Public meeting** held at West End Community Centre to discuss Chapters 5 and 6, aborted due to poor attendance
14. Attended at **Governor's Office** to discuss proposals for electoral reform
17. Emailed all media houses **Press Release No 8** concerning proposals for electoral reform
20. **Public meeting** held at St Andrew's Anglican Church in Island Harbour discussing Chapter 9, Anguilla Status
27. **Public meeting** held at St Augustine's Anglican Church discussing electoral reform and the draft new Elections Bill

### Nov

23. Published the latest discussion Drafts of the proposed new Constitution for Anguilla, new Elections Act, and new Electoral Boundaries Commission Act on the **Government website** for public information and feedback

23. Published the latest discussion Drafts on the **House of Assembly website** for public information and any feedback
24. Emailed all media houses with **Press Release No 9** for publication
24. Attended meeting with **Anguilla National Youth Council** to discuss constitutional reform proposals
30. Emailed the members of the **Anguilla Bar Association** and the **Department of Youth and Culture** reminding of promised meetings, and also sending them **Press Release No 10** for circulation
30. Mr Romney published **Press Release No 10** on various **Google Groups** maintained by youth organisations

## **Dec**

2. Emailed all media houses with **Press Release No 10** for publication
2. Emailed all political parties in Anguilla with **Press Release No 10**
6. Appeared on Mark Romney's **Up-Front programme** on Radio Anguilla
8. Published Part 1 of an Article on constitutional reform in **The Anguillian Newspaper**
15. Published Part 2 of an Article on constitutional reform in **The Anguillian Newspaper**
22. Published Part 3 of an Article on constitutional reform in **The Anguillian Newspaper**

## **2017**

### **Jan**

14. Published Part 4 of an Article on constitutional reform in **The Anguillian Newspaper**
20. Published the final Part 5 of an Article on constitutional reform in **The Anguillian Newspaper**



**DRAFT NEW CONSTITUTION FOR ANGUILLA**  
**EXPLANATORY MEMORANDUM**

In execution of the mandate given to it by the Executive Council of the Government of Anguilla in September 2015, the Constitutional and Electoral Reform Committee makes a number of proposals for constitutional reform. The major new proposals include the following:

**Preamble**

We propose the introduction of a Preamble to the Constitution, as recommended by paragraph 4 of the 2006 Report.<sup>4</sup>

**Fundamental Rights**

**Protection of right to personal liberty** (section 4)

This section now

- (1) Guarantees the right of an arrested person to be informed orally and in writing of the charge as recommended by paragraph 12 of the 2006 Report (subsection (3)).
- (2) Guarantees the right to legal representation (subsection (5)).
- (3) Guarantees the right of an informed person to be informed of his rights and to have one person informed of his arrest and his whereabouts (subsection (6)).
- (4) Guarantees the police cannot hold an arrested person for more than 48 hours without bringing him before a court, as recommended by paragraph 13 of the 2006 Report (subsection (7)).
- (5) Guarantees the right to compensation to anyone wrongfully arrested (subsection (8)).

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<sup>4</sup> [http://www.gov.ai/constitutional\\_reform.php](http://www.gov.ai/constitutional_reform.php)

### **Protection of right of prisoners to humane treatment (section 5)**

This section

- (1) Guarantees detainees' right to be treated with humanity (subsection (1)).
- (2) Provides a right of unconvicted prisoners to be segregated from convicts (subsection (2)).
- (3) Requires that minor prisoners be segregated from adults (subsection (3)).

### **Protection from deprivation of property (section 9)**

This section requires compensation to be paid promptly and in money (subsection (1)(b)).

### **Provision to secure protection of law (section 11)**

This section

- (1) Makes Chamber hearings public by omitting them from the exception (subsection (4)).
- (2) Gives the right to an accused to opt to be tried by a judge alone without a jury (subsection (6)(f)).
- (3) Permits a criminal trial to proceed if the accused deliberated absconds (subsection (7)(b)).
- (4) Provides compensation to a person wrongfully charged and convicted of a criminal offence who is subsequently found to have been a victim of a miscarriage of justice (subsection (12)).

### **Protection of freedom of expression (section 13)**

This section asserts that all publicly owned media shall be equally available to all political parties.

### **Protection from discrimination on the basis of race, etc (section 15)**

This section

- (1) Permits discrimination in the provision of services in favour of Anguillians (subsection (4)).
- (2) Permits discrimination in favour of women where such discrimination is justifiable for the protection or well-being of women (subsection (7)(b)).

### **Protection of the environment (section 16)**

This section introduces a fundamental right to the protection of the environment. Such a provision will oblige government to insist on professionally conducted environmental impact assessments prior to the approval of any major development on the island or face a constitutional challenge.

### **Protection of children (section 17)**

This section introduces a fundamental right to pass laws for the protection of children.

### **Protection of persons detained under emergency laws (section 19)**

This section provides for legal representation at the public cost (subsection (3)).

### **Declaration of emergency (section 21)**

- (1) This section obliges the Governor to act on the advice of Cabinet, as recommended by paragraph 28 of the 2006 Report (subsection (1)).
- (2) The state of emergency lapses after 21 days unless confirmed by the Legislature (subsection (3)(b)).

## **Chapter 2: Interpretation**

### **Interpretation (section 22)**

This section defines most of the important terms used in the Constitution. Questions have arisen on only one of them, “*masculine gender includes the female gender*” (subsection (7)). Although today it is not normally politically correct to use the pronoun “he” to include “she”, it has been found too

cumbersome to use “he or she”, and “him and her”, and “his and hers”; and too ugly to use “he/she” or “s/he”, throughout the Constitution.

### **Chapter 3: The Governor**

#### **The Governor** (section 29)

This section requires the FCO to consult the Premier and the Leader of the Opposition on the appointment of a new Governor (subsection 5)).

#### **Office of Deputy Governor** (section 30)

- (1) This section requires this officer to be an Anguillian (subsection 1)). This is as recommended by paragraph 31 of the 2006 Report.
- (2) The Premier and the Leader of the Opposition will jointly propose 3 names to the Secretary of State (the Secretary) who shall choose one of them. If they do not agree, all the applications are sent to the Secretary for his decision (subsection (2)).

#### **Functions of the Deputy Governor** (section 32)

The wording is mainly taken from the VI Constitution. The principal change is to formally make the DG the head of the public service (subsection (2)).

### **Chapter 4: The Executive**

#### **Executive authority of Anguilla** (section 34)

- (1) The 1982 Constitution provides that executive authority shall be vested in Her Majesty who acts through the Governor. The Governor merely consults with the Executive Council (section 28). This is considered out of date, and needs modernising.
- (2) The new section provides that executive authority vests in Her Majesty and may be exercised on her behalf by the Government of Anguilla, which by definition includes the Governor.

### **Cabinet and Government of Anguilla (section 35)**

The principal changes are that Executive Council is re-named “Cabinet”; the Chief Minister is re-named “Premier”; the Governor is no longer a member of Cabinet; there is an increase in number of Ministers from 4 to 6; the DG and the A-G sit in Cabinet, but they are without a vote, all as recommended by the 2006 Report. Additionally, while the Cabinet and the Governor together constitute the Government of Anguilla, the Governor does not chair Cabinet meetings, and offers advice but does not decide.

### **Appointment of ministers (section 36)**

- (1) This section provides for the appointment of a Deputy Premier, as recommended by paragraph 48 of the 2006 Report (subsection (3)).
- (2) With the coming into effect of the new Constitution and the increase of the number of Ministers to 6, the Special Assistants Act will be repealed as there will no longer be any need to employ members of the Assembly as ministerial assistants (subsection (4)).

### **Tenure of office of ministers (section 37)**

- (1) On a vote of no confidence succeeding, the Governor has a discretion on whether or not to call for general elections (subsection (1)). This carries us back to the 1976 position and reverses the 1982 position, which was that the Governor was obliged to call a general election if a vote of no confidence succeeded.
- (2) There is introduced a two consecutive terms limit for the Premier (subsection (2)).
- (3) There is an automatic vacation of his seat if an elected member, which includes a Minister, breaches the Code of Ethics for Persons in Public Life (subsection (3)(c)).
- (4) A motion of no confidence must be dealt with within one month (subsection (5)).



### **Performance of functions of Premier in certain events** (section 38)

If the Premier is to be absent for more than 48 hours, the Deputy Premier is to be authorised to act (subsection (1)).

### **Assignment of responsibilities and Ministers** (section 39)

The Governor must assign responsibilities to Ministers in accordance with the advice of the Premier and must likewise remove or amend any such assignment.

### **Attorney-General** (section 40)

In accordance with paragraph 70 of the 2006 Report, the A-G, who must normally be an Anguillian, is appointed by the Governor after consultation with the Premier and the Leader of the Opposition.

### **Director of Public Prosecutions** (section 41)

This is a new office as recommended by paragraph 71 of the 2006 Report. Whenever the A-G is a public officer, the A-G may perform the functions of the DPP.

### **Governor's special responsibilities** (section 42)

- (1) The wording taken from the VI Constitution, save that the public service is transferred to the Deputy Governor at section 30.
- (2) The Governor is made responsible for external affairs (subject to subsection (4)); defence; internal security (subject to section 86); and administration of the courts (subsection (1)). The Governor must, as recommended by paragraph 53 of the 2006 Report, keep the Premier fully informed of the general conduct of such matters. This is designed to strengthen the democratic process.
- (3) The Governor may delegate responsibility for external affairs or internal security to the Premier if approved by the Secretary of State (subsection (3)).
- (4) The Governor must delegate to the Premier or another Minister recommended by the Premier responsibility for Caricom, the OECS, and

other regional governments and institutions, including relationships with St Maarten/St Martin and the USVI in matters of mutual interest (subsection (4)).

#### **Summoning of persons to Cabinet** (section 44)

It is the Premier who now summonses public officers to Cabinet meetings, as recommended by paragraph 66 of the 2006 Report.

#### **Summoning of Cabinet and transaction of business** (section 45)

- (1) Only the Premier can summon a meeting of Cabinet, as recommended by paragraph 67 of the 2006 Report (subsection (1)).
- (2) A quorum for meetings of Cabinet is 4, as recommended by paragraph 68 of the 2006 Report (subsection (2)).

#### **Presiding in Cabinet** (section 46)

The Premier, or in his absence the Deputy Premier, presides at Cabinet meetings, as recommended by paragraph 69 of the 2006 Report (subsection (1)).

#### **Cabinet Secretary** (section 47)

- (1) There shall be a Cabinet Secretary who shall be an Anguillian (subsection (1)).
- (2) He keeps the minutes of meetings and has such other functions as the Governor may direct after consultation with the Premier (subsection (2)).
- (3) He has general responsibility under the Premier for the coordination of Government business (subsection (4)).

### **Chapter 5 – The Public Service**

#### **Power to appoint, etc, to public office** (section 49)

- (1) The principal change is that the Deputy Governor (DG) now no longer acts merely after consultation with the PSC, but is generally obliged to act on the advice of the PSC.

- (2) (a) The Governor appoints the DG and the Chief Auditor after consulting the Premier and the Leader of the Opposition (subsection (1)(a)).  
  
(b) the DG appoints teachers in accordance with the advice of the Teaching Service Commission; police officers in accordance with the advice of the Police Service Commission; and all other offices in accordance with the advice of the PSC (or any combined PSC in accordance with section 103(1)(h)).
- (3) If the DG is minded to act against the advice, he may refer the matter back to the service commission along with a reasoned statement for reconsideration by it (subsection (2)).
- (4) If the PSC substitutes different advice, the process is repeated (subsection (3)).
- (5) The DG must consult the Premier on the appointment of any department head or more senior officer (subsection (4)).
- (6) The Governor appoints the Cabinet Secretary on the advice of the Premier, but the Governor may ignore the advice if he is satisfied that advice would prejudice HM's service (ie, is perverse), (subsection (5)).
- (7) Where the Governor is minded to refuse the Premier's advice on the appointment of a Cabinet Secretary, he should refer the appointment back to the Premier for advice from the PSC (subsection (6)).
- (8) The Premier recommends appointment of the Cabinet Secretary from a list of qualified and competent persons submitted by the PSC, provided the Premier can once request an additional list from the PSC (subsection (7)).
- (9) The DG may delegate his powers of appointment (subsection (8)).
- (10) The Premier may request a report about the functioning of the public service from each of the service commissions. This is an advanced provision which introduces a sense of responsibility for the good

functioning of the public service into the top ranks of the political directorate (subsection (9)).

- (11) This section does not apply to appointment to judicial offices (subsection (10)).
- (12) In the event one service commission performs the functions of the three commissions, the provisions apply equally (subsection (11)).

## **Chapter 6 – House of Assembly**

### **Composition of the Legislature and power to make laws (section 53)**

This section is adapted from the Virgin Islands Constitution which provides for division into at least 9 districts and with 4 members elected at large.

### **Qualifications for elected membership (section 54)**

This section proposes retaining the present qualifications, save for citizenship. It is generally agreed that the Anguillian diaspora should not be barred by a British Citizenship requirement from participating fully in Anguilla's leadership.

### **Disqualification for elected membership (section 55)**

The existing provision is amended, in accordance with paragraphs 86-90 of the 2006 Report, to remove the disqualifications for ministers of religion, and persons who have acquired a foreign naturalisation, and to introduce a disqualification for life for any person convicted of an offence of immorality or dishonesty.

### **Declaration by candidates for election to House of Assembly (section 56)**

This will legalise the declaration introduced in the last general elections.

### **Tenure of office of members of the Assembly (section 57)**

- (1) Absence from 3 meetings of the House of Assembly requires prior notice to the Speaker (paragraph (b)).
- (2) There is a provision for the voters to recall an elected member (paragraph (f)).

- (3) Within one month of the coming into effect of this Constitution, members of the Assembly are required to file their declaration of interests under section 98 and to file the same annually thereafter, failing which their seat in the Assembly is declared vacated (paragraph (g)).

**Vacation of seat on sentence** (section 58)

- (1) Conviction of an offence of dishonesty or immorality results in vacation of the seat and automatic disqualification for life (subsection (1)).
- (2) If a member of the Assembly is charged with an offence of dishonesty or immorality, he is immediately suspended from membership until such time as he is either acquitted or convicted (subsection (3)).

**Leader of the Opposition** (section 60)

The present provision in the 1982 Constitution is amended to provide that if the Opposition do not agree on a leader, the Governor is to choose the longest serving member, in accordance with paragraph 94 of the 2006 Recommendations.

**Power to provide for a referendum** (section 61)

There is widespread agreement that the law ought to provide for Government to be able to seek the approval of the Anguillian public on important initiatives. The wording is taken from section 69 of the Cayman Constitution.

**People-initiated referendum** (section 62)

- (1) This provision will enable the people to initiate a referendum in certain circumstances. The wording is taken from the Cayman Islands Constitution.
- (2) Calling for such a referendum requires a petition to Cabinet signed by not less than 25% of the electorate (subsection (2)).
- (3) The result of the referendum is binding on the Government, once more than 50% of those voting support the question (subsection (3)).

### **Penalty for sitting or voting in Assembly when unqualified** (section 64)

The existing provision is amended, as recommended by paragraphs 97-100 of the 2006 Report, to make it clear that a person is unqualified to sit or vote only if a court has so determined.

### **Qualification of voters** (section 65)

- (1) The main change is to remove citizenship as a qualification, as recommended by paragraphs 102-103 of the 2006 Report.
- (2) To be a voter, one must be an Anguillian (subsection (1)(a)).
- (3) One must be ordinarily resident for 3 years, as compared with the present requirement for residence only, as recommended by paragraph 104 of the 2006 Report (subsection (1)(b)).

### **Laws as to elections** (section 66)

- (1) The 1982 Constitution merely provides for the division of Anguilla into electoral districts, and leaves it for a law to decide how many districts there will be.
- (2) On the adoption of the new Elections Act (which the Committee has drafted in accordance with its mandate) and which is expected to come into effect prior to the adoption of any new Constitution, the island will be divided into not less than 9 local electoral districts and one island-wide district from which not less than 4 persons shall be elected (section 67(2)).
- (3) The section authorises the Elections Act to regulate campaign financing (section 66, paragraph (i)). The particular campaign financing proposals of the Committee are located in the draft new Elections Act.

### **Elected members** (section 67)

This section now provides for there to be not less than 4 members elected island-wide, and not less than 9 members to be elected from 9 local electoral districts.

## **Chapter 7 – Powers and Procedures in the House of Assembly**

### **Standing Orders and committees** (section 68)

This provides for Standing Orders, instead of the present Rules of Procedure, and also for Standing and other Committees, and confers certain powers on such Committees.

### **Quorum** (section 71)

This provides, as recommended at paragraphs 119 to 121 of the 2006 Report, for a quorum of the Assembly to be a simple majority instead of a fraction.

### **Summoning of persons to assist the Assembly** (section 73)

This new provision is in accordance with the recommendation at paragraph 125 of the 2006 Report. The Assembly is empowered to summon persons in the community to assist it in its deliberations.

### **Introduction of Bills** (section 74)

This section used to provide that Money Bills could only be introduced on the recommendation of the Governor, which requirement was never enforced. The new provision requires the recommendation of the Minister of Finance instead.

### **Assent to Bills** (section 75)

This section gives the Governor the power to reserve any Bill that in his opinion is inconsistent with UK obligations; or prejudices the Royal Prerogative; or is inconsistent with the Constitution, for authorisation by a Secretary of State.

### **Return of Bills by Governor** (section 76)

- (1) The previous position (section 58) was unclear as to what was to happen if the Governor returned a Bill to the Assembly and the Assembly did not accept the Governor's recommendation. The position is made clear in three subsections.
- (2) The Governor may return a Bill to the House with a recommendation for amendment for the Assembly to consider (subsection (1)).

- (3) If the Assembly changes the recommendation, the Governor may return it with further recommendation (subsection (2)).
- (4) If the Assembly rejects the amendment, the Governor must assent to the Bill (subsection (3)).

### **Power of Disallowance**

The present 1982 Constitution (section 59) provides that even where the Governor has given his Assent to a Bill, the Secretary of State could disallow it. The 2006 Report at paragraph 133 recommended that this old colonial provision was no longer appropriate, and should be removed. This draft accordingly has no provision for disallowance by the Secretary of State.

### **Standing Committees** (section 77)

- (1) The existing provision is modernised and redrafted.
- (2) The House shall establish at least the Appropriations Committee and the Public Accounts Committee (subsection (1)).
- (3) Each Standing Committee consists of members who are not Ministers (subsection (2)).
- (4) The composition of each Committee shall reflect the representation of the political parties in the House (subsection (3)).
- (5) Each Standing Committee has power to summon any Minister or public officer to answer questions and provide information on oath, and to report to the House (subsection (4)).
- (6) Each Standing Committee must be chaired by a member of the Opposition, with the PAC to be chaired by the Leader of the Opposition (subsection (5)).
- (7) The House shall publish the Reports submitted to it (subsection (6)).



## **Chapter 8 – The Judicature**

### **Eastern Caribbean Supreme Court (section 83)**

This is taken from the VI Constitution, as the wording is an improvement on the previous provision.

### **Subordinate courts and tribunals (section 84)**

This is taken from the VI Constitution, as the wording is an improvement on the previous provision.

### **Appeals to Her Majesty in Council (section 85)**

In the 1982 Constitution, this provision is located in a Miscellaneous Chapter. It is now proposed to relocate it to the Chapter on the Judicature, in accordance with the recommendation in the 2006 Report.

## **Chapter 9 – Institutions Protecting Good Governance**

The question of political independence for Anguilla occasionally arises in public discourse. It is the sense of the Committee that such a proposal does not at this time find favour with any significant number of Anguillians. It is generally accepted that over the past 40 years of internal self-government successive Anguillian administrations have had difficulty in living up to acceptable standards of good governance. The political directorate of Anguilla will need to prove their ability to adhere to rules of accountability, transparency and integrity, before the majority of Anguillians will risk their lives and property in their unsupervised hands. A first step in this direction would be, while maintaining a colonial framework or regime, to introduce into any new Constitution a number of institutions that, if adhered to, will tend to guarantee good governance. Once this is satisfactorily established, further political advancement can be contemplated.

This Chapter envisages 13 different Commissions and 6 different Commissioners. However, for cost efficiency, it is provided that their functions may be amalgamated into one or more bodies, and it is not essential that they all be separately appointed.

### **Electoral District Boundary Commission** (section 86)

- (1) The original district boundaries of Anguilla have never been revised, and are now of uneven area and population density. There is need to revise the boundaries, and to do this there must be an independent Commission authorised to carry out this function.
- (2) The Commission would be appointed every 10 years (to coincide with any national census report or findings), (subsection (1)).
- (3) The Chairman would be appointed by the Governor and one member on the advice of each of the Premier and the Leader of the Opposition (subsection (2)).
- (4) A member of the Assembly and a public officer are disqualified (subsection (3)).
- (5) A quorum for meetings shall be 2 (subsection (4)).
- (6) All members must vacate office the day after submitting a report; or if he becomes disqualified (subsection (5)).

### **Review and alteration of electoral district boundaries** (section 87)

- (1) The new Elections Act is expected to come into effect before the new Constitution is adopted. The Act will provide for an Electoral Boundaries Commission to be established and appointed (as the present Constitution permits). The Commission is to proceed to divide the island into 9 local districts and 4 island-wide districts. This section, when the new Constitution comes into effect, will then give a constitutional guarantee of this process.
- (2) This section imposes a duty on the Electoral District Boundary Commission to review the boundaries and to submit a Report to the Governor and the Assembly containing recommendations (subsection (1)).

- (3) The Commission must seek to make the districts approximately equal in numbers of voters based on the last previous census report (subsection (2)).
- (4) Once the Report is delivered, a Bill is introduced into the House to give effect to the Report (subsection (3)).
- (5) If the Bill seeks to modify the Commission's recommendations, there must be a statement of the reasons submitted at the same time (subsection (4)).

#### **Public Service Commission** (section 88)

- (1) The proposal is for the existing functions of the PSC to be varied in accordance with the recommendations at paragraphs 141-146 of the 2006 Report.
- (2) The PSC will consist of 5 persons of whom 3 are appointed on the DG's discretion and 2 after consultation with the public service staff associations (subsection (1)).
- (3) A quorum is 4 (subsection (2)).
- (4) The PSC advises the DG on all appointments, disciplining and remuneration of public servants (subsection (3)). The DG is generally required to act on the advice of the Commission.

#### **Teaching Service Commission** (section 89)

Note that this may be amalgamated with the PSC.

#### **Police Service Commission** (section 90)

Note that this may be amalgamated with the PSC.

#### **Power to Appoint, etc, to offices in the Police Service** (section 91)

- (1) This new proposal removes the promotion and appointment and promotion of police officers from the personal control of the Commissioner

of Police and divides that power between the Governor for senior officers and the Deputy Governor for junior officers.

- (2) Up to the rank of Inspector, appointments are to be made by the DG acting on the advice of the Police Service Commission. The DG may go against that advice if it would prejudice HM's service (ie, is perverse) (subsection (1)).
- (3) Appointments above the rank of Inspector are made by the Governor acting on the advice of the Police Service Commission after approval by the National Security Commission, but the Governor may act against that advice if he is satisfied it would prejudice HM's service (subsection (2)).
- (4) Before rejecting the advice of the Police Service Commission the Deputy Governor and Governor may once refer the matter back (subsection (3)).
- (5) If the Commission on reconsideration makes another recommendation, the process starts again (subsection (4)).
- (6) The DG may delegate his powers. This provision will permit the DG to delegate his powers in suitable cases, eg, very junior officers, to a senior police officer (subsection (5)).

#### **National Security Commission** (section 92)

- (1) The establishment of this Commission (the NSC) follows the recommendation in paragraph 179 of the 2006 Report.
- (2) The NSC consists of the Governor, the DG, the Premier, one other Minister, the A-G, and the COP (subsection (1)).
- (3) The NSC advises the Governor on matters relating to internal security. The Governor is normally obliged to act on such advice, unless he considers it not in HM's interest (ie, perverse), (subsection (3)).
- (4) The COP is to provide regular briefings to the Commission (subsection (4)).

- (5) The NSC may invite any person or summon any public officer to attend (subsection (5)).
- (6) The Governor must summon the Commission if the Premier so requests (subsection (6)).
- (7) The NSC regulates its own procedure (subsection (7)).
- (8) The Cabinet Secretary is secretary to the NSC (subsection (8)).
- (9) The quorum is 4 members (subsection (9)).

#### **Financial Services Commission** (section 93)

This provision would give the FSC constitutional protection and security of tenure.

#### **Appointments Commission** (section 94)

- (1) This Commission would consist of 3 members, one appointed by each of the Governor, the Premier and the Leader of the Opposition (subsection (1)).
- (2) A quorum shall be 2 (subsection (2)).
- (3) No person may be appointed to any government-controlled board, committee or commission not subject to its own separate legislation without approval of this Commission (subsection (3)).
- (4) The Commission shall act in accordance with any Act that may be passed to govern it (subsection (4)).

#### **Judicial and Legal Services Commission** (section 95)

This local JLSC already exists, but the present provision is supplemented by additional guidance from the VI Constitution.

#### **Power to appoint, etc, to legal offices** (section 96)

- (1) This section already exists, but the wording is taken from the VI Constitution amended to continue the present practice of making appointments on contract (subsection (9)).

- (2) It deals with appointments of the A-G, the DPP, a Magistrate, a Registrar, and Crown Counsel (subsection (4)).
- (3) The A-G must be an Anguillian unless there is no qualified Anguillian willing to be appointed (subsection (6)).

#### **Integrity Commission** (section 97)

- (1) The Commission would consist of a Chairman, who must be a barrister of at least 10 years' experience, and 2 other members appointed one on the recommendation of the Premier and the other on the recommendation of the Leader of the Opposition (subsection (1)).
- (2) It promotes integrity, honesty and good faith in public life (subsection (3)).
- (3) It exercises the functions conferred by sections 37, 55, 98, and 126. It will publish a Code of Conduct for Persons in Public Life and investigate any alleged failure to abide by the Code. It will have such other functions as a law may confer (subsection (4)).
- (4) A quorum is 2 out of the 3 members (subsection (5)).
- (5) The Commission makes an annual Report to the House which is to be published (subsection (6)).

#### **Registration of interests** (section 98)

- (1) There has always been provision for such a Register in previous Anguilla Constitutions, applying only to Members of the Assembly, but there has never been a provision for enforcement. It is proposed that this requirement be now introduced.
- (2) The Register of Interests will now be a public document (subsection (1)).
- (3) There is a duty to declare such interests, assets, income and liabilities of any person to whom the section applies or any person connected to him as may be prescribed by a law (subsection (2)).
- (4) The declaration is to be made on assuming office, and every 12 months thereafter (subsection (3)).

- (5) The section applies to all members of the House of Assembly immediately upon the coming into effect of the Constitution, and subsequently to the holders of all other offices as may be prescribed by law (subsection (4)). It is expected that this provision will be extended to all Permanent Secretaries, Heads of Departments, and members of public boards, committees and commissions, of whom accountability, transparency and integrity are demanded.
- (6) The law may set out the sanctions for failure to comply. Members of the Assembly are immediately bound by this requirement and their sanction is loss of their seat as provided by section 57(g). Failure of a Member of the Assembly to declare his interests annually results in automatic loss of his seat under section 57(g) (subsection (5)).

**Anguillian Status Commission** (section 99)

- (1) This provision is based on the recommendations at paragraphs 167-178 of the 2006 Report.
- (2) The principle change is to give the grandchildren of Anguillians full rights, and to give the great-grandchildren of Anguillians full rights if they satisfy certain residence conditions. A second is to get rid of “Belonger” and to replace it with “Anguillian”.
- (3) The first subsection establishes the Commission (subsection (1)).
- (4) The second subsection defines an Anguillian as a person who is or was,
  - (a) born or adopted with an Anguillian parent or grandparent;
  - (b) a great-grandchild of an Anguillian who has resided in Anguilla for 5 years, which status may be withdrawn on conviction of an indictable offence;
  - (c) resident on Anguilla for 15 years or through marriage, which status may be revoked on conviction of an indictable offence;

- (d) the spouse of an Anguillian married for a period of not less than 5 years, which status may be withdrawn on conviction of an indictable offence;
- (e) the minor child of a person qualifying by residence under (c) above who has been residing in Anguilla for at least 3 years, which status may be withdrawn on conviction of an indictable offence;
- (f) born in Anguilla and living here for 12 years, which status may be withdrawn on conviction of an indictable offence; and
- (g) previously granted Belonger Status.

**Advisory Commission on the Prerogative of Mercy** (section 100)

- (1) This provision is in accordance with recommendation at paragraph 163 of the 2006 Report.
- (2) It establishes a Mercy Commission consisting of the A-G, the Director of Health Services and 4 members appointed on the advice of the Cabinet.
- (3) The Governor grants pardons and respites based on the recommendation of the Commission (subsection (3)).

**Commissions of Inquiry** (section 101)

There is at present legislation for Commissions of Inquiry, but it is thought appropriate to entrench their independence from political and other pressures by including them in the Constitution.

**General provisions regarding Commissions** (section 102)

- (1) This is a consolidation of various provisions governing individual Commissions to avoid duplication and repetition.
- (2) A Commission is not to be subject to the direction or control of any other person or authority (subsection (2)).



- (3) A Commission may with the consent of the Governor confer powers or impose duties on any public officer for the purpose of discharging its functions (subsection (3)).
- (4) The Chairman is appointed by the Governor (subsection (5)).
- (5) Independence is protected by insulating their emoluments from political attack (subsection (11)).
- (6) Each Commission must report annually to the House of Assembly (subsection (13)).
- (7) The Report must be published within one month (subsection (14)).

**Legislation regarding Commissions** (section 103)

- (1) This provision is adapted from the VI Constitution and is designed to avoid duplication in the drafting for each Commission. The most important provision that may be included in such a law is the following one.
- (2) If two or more Commissions are amalgamated, the amalgamated Commission will have the full powers of each of the constituent Commissions. If the service Commissions are amalgamated, it shall be known as the Service Commission. If other Commissions are amalgamated, it shall be known as the Administrative Law Commission (subsection (1)(h)).

**Human Rights Commissioner** (section 104)

- (1) As recommended by paragraph 182 of the 2006 Report.
- (2) His powers and duties are to be set out in a law, and include various matters such as promoting conciliation with respect to disputes; issuing guidance for dealing with complaints; and preparing reports to the House of Assembly (subsection (2)).

### **Complaints Commissioner (section 105)**

This is the Ombudsman as recommended by paragraph 181 of the 2006 Report. It will be a great saving to members of the public if they are no longer obliged to take a complaint against the administration to court for relief.

### **Police Complaints Commissioner (section 106)**

As recommended by paragraph 62 of the 2006 Report. It is thought inappropriate to continue to have the COP as the only person, other than the court, to whom a complaint of bad behaviour on the part of a police officer can be taken.

### **Public Procurement Commissioner (section 107)**

This is an officer whose duty it is to ensure the public procurement process works as intended, without the need to take complaints to court.

### **Freedom of Information Commissioner (section 108)**

- (1) This is the office which enforces the Freedom of Information Act.
- (2) He receives complaints and investigates, decides on and reports on compliance by public authorities (subsection (1)).
- (3) The section gives a right, within reason, of access to all information held by public authorities (subsection (2)).
- (4) The section ensures publication of all good governance reports (subsection (3)).

### **Supervisor of Elections (section 109)**

This section would guarantee that the appointment and duties of the Supervisor of Elections are removed from political interference.

### **General provisions relating to Commissioners (section 110)**

- (1) The section is adapted and consolidated from various provisions relating to individual Commissioners in the Constitutions of other BOTs.

- (2) Appointments are to be for a minimum period of 5 years to guarantee political independence. Appointment is by the Governor after consultation with the premier and the Leader of the Opposition (subsection (2)).
- (3) Political persons may not be appointed (subsection (3)).
- (4) A Commissioner may not be employed in the public service or engage in any occupation for reward, save where authorised by the Governor in writing (subsection (5)).
- (5) A Commissioner is not to be subject to the direction or control of any person (subsection (6)).
- (6) A law may provide for payment of a salary to a Commissioner, which may not be increased or reduced while he is in office, as a guarantee of independence (subsection (7)).
- (7) For efficiency and the saving of costs, various Commissioners may be amalgamated into one office to be known as the Constitutional Commissioner (subsection (8)).
- (8) Each Commissioner must publish an annual Report to the House of Assembly (subsection (10)).
- (9) The Speaker is obliged to publish the Report on a publicly available website (subsection 11)).

**Public assets** (section 111)

- (1) As recommended by paragraph 162 of the 2006 Report, any dealing in government lands in excess of one acre requires approval by the Assembly.
- (2) The section has been expanded to include not only Crown land, but also any mineral or fishing and other public assets.

**Chapter 10 – Public Finance**

As a further guarantee of good governance, it is generally accepted among the Anguillian citizenry that public finances need to be more thoroughly regulated,

and the rules more stringently enforced, than they have been in previous years. The present rules for handling the public finances of Anguilla are set out in the existing Financial Administration and Audit Act. The deliberate ignoring of the rules over the past decades has caused the Chief Auditor to be critical of Anguilla's public accounts.<sup>5</sup> We have, it appears, never in the history of Anguilla's public accounts received a clean audit report.

This Chapter is taken from the "*revised alternate draft of 9 June 2015*" of the Anguilla Public Finance Order 2015 (the draft 2015 Order) which the FCO had proposed to impose on Anguilla if the administration did not take the necessary steps to practice fiscal responsibility. The Committee proposes that we should introduce its more salubrious proposals ourselves rather than wait for them to be imposed.

#### **General principles** (section 112)

- (1) This provision is section 3 of the draft 2015 Order, amended to take account of the Terms of Reference (ToR) agreed between the Government of Anguilla (the Government) and the FCO. Its main provisions are as follows.
- (2) The macro-economic and fiscal policies of the Government are to be formulated for the sustained long term prosperity of the people of Anguilla (subsection (1)).
- (3) Public funds to be managed on principles of value for money, etc, (subsection (2)).
- (4) Government must formulate a Fiscal Framework setting limits to public debt relative to public revenue; limiting debt service costs; and setting levels of reserves (subsection (3)).
- (5) The Fiscal Framework is to be agreed with the FCO and published in the Gazette (subsection (4)).

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<sup>5</sup> <http://www.gov.ai/documents/hoa/Government%20of%20Anguilla%202013%20Accounts.pdf>

- (6) Every 6 months the Minister of Finance (the Minister) must report to the House of Assembly (the Assembly) on the performance of Government in implementing the Fiscal Framework; and, on the state of the public finances and the economy of Anguilla (subsection (6)).
- (7) The Government shall aim to achieve a surplus budget, and where an Appropriation Act will not return a surplus budget, the Minister must lay before the Assembly a statement explaining the reasons (subsection (7)).
- (8) Where the Government is in breach of the Fiscal Framework, any Appropriation Bill must be approved by the Secretary; and the Government must agree with the Secretary a Medium Term Fiscal Plan with milestones for meeting key debt ratios, etc (subsection (8)).

#### **Taxation** (section 113)

- (1) No tax, rate or levy may be imposed save under the authority of an Act (subsection (1)).
- (2) Where the Act authorises a person to vary a tax, that person must report to the Assembly every 6 months (subsection (2)).

#### **Contingent liabilities** (section 114)

All contingent liabilities of the Government are to be subject to independent actuarial assessment every 2 years, and a report made to the Assembly within 2 months.

#### **Consolidated Fund** (section 115)

- (1) All revenue is to be paid into it (subsection (1)).
- (2) The only exception is where an Act permits it (subsection (2)).
- (3) All funds must be either at a bank on call, or subject to 12 months' notice, or in an investment authorised by law and approved by the Assembly (subsection (3)).

### **Withdrawal from Consolidated Fund or other public funds** (section 116)

Funds may only be withdrawn from the Consolidated Fund to meet expenditure charged on it by a law, or where authorised by an Appropriation Act (subsection (1)).

### **Financial year estimates** (section 117)

(1) The new provision is that at least 6 weeks before the new financial year the Minister is to present to the Assembly the estimates of revenue and expenditure; a document setting out targets for revenue and expenditure; and an assessment of performance against debt sustainability limits as set out in the Fiscal Framework.

(2) These estimates and documents are to be published without delay.

### **Appropriation Bill** (section 118)

(1) Obliges there to be an Appropriation Bill every year (subsection (1)).

(2) If the funds appropriated are insufficient, there shall be a supplementary estimate laid by the Minister before the Assembly (subsection (2)).

(3) The supplementary estimate shall be included in a Supplementary Appropriation Bill introduced into the Assembly (subsection (3)).

(4) The Governor may refuse to assent to an Appropriation Bill if it is inconsistent with section 107 or the Fiscal Framework (subsection (4)).

### **Power of Government to borrow or lend** (section 119)

(1) All borrowing must be authorised by an Act and be in accordance with the Fiscal Framework and other agreed borrowing guidelines (subsection (2)).

(2) The Minister is to report to the Assembly every 6 months as to the total indebtedness; the servicing of the loan; and the utilization and performance of the loan (subsection (4)).

(3) Where the UK guarantees any loan, the Government shall repay the loan as quickly as possible (subsection (5)).

- (4) Any UK guarantee shall be the subject of a counter-guarantee (subsection (6)).
- (5) Any agreement for Government to give a loan shall have no effect unless approved by the Assembly by resolution (subsection (8)).
- (6) Any such resolution shall be compatible with section 107 and the Fiscal Framework (subsection (9)).

### **Further powers of Governor**

This section in the original draft Order has been omitted to give effect to the ToR agreed between the Government and the FCO.

### **Exercise of functions by Governor (section 120)**

It provides that in the exercise of any function conferred by sections 112 to 119, the Governor is to comply with instructions given by the Secretary.

### **Appropriations Committee (section 121)**

- (1) This section establishes the Appropriations Committee which is to be appointed by the Speaker from among the members who are not ministers, at least one of whom shall be from the Opposition (subsection (1)).
- (2) The Committee has power to compel production of documents and evidence from Ministers and public officers, and shall meet in public (subsection (3)).
- (3) The Committee's Reports are to be published (subsection (5)).

### **Funding of Institutions of good governance (section 122)**

- (1) It is recognised that unless the provision of resources for institutions of good governance is removed from the control of the political directorate and placed in the hands of the Assembly, a Commission that has fallen out of favour is likely to be neutralised by starving it of funds.

- (2) It is the duty of Government to provide any accommodation and other resources reasonably required, and the PSC may approve the temporary transfer to any institution of members of the public service reasonably requested by the institution (subsection (1)).
- (3) By August 31 of each year, every institution must submit its budget for approval by the Appropriations Committee and by the Assembly (subsection (2)).
- (4) The Assembly may pass or reject such a budget but may not amend it (subsection (3)).
- (5) If it is passed, it forms part of the Appropriation Act for that year (subsection (4)).
- (6) If it is rejected, the Appropriations Committee reconsiders it, discusses it with the institution, and recommends a revised budget to the Assembly (subsection (5)).

**Public Accounts Committee** (section 123)

- (1) As recommended by paragraph 126 of the 2006 Report, the PAC will have power to summon witnesses to testify on oath in public hearings.
- (2) The PAC consists of at least 3 members appointed by the Speaker from among members of the Assembly who are not Ministers and 2 members who are expert in public finance, one appointed by the Speaker and one by the Governor (subsection (1)).
- (3) The Leader of the Opposition continues to be the Chairman of PAC (subsection (2)).
- (4) Membership as an expert in public finance is vacated on the expiration of the period for which he was appointed; if he becomes a member of the Assembly; or if his appointment is revoked (subsection (3)).
- (5) The PAC examines and reports on the Chief Auditor's Report and such other functions as may be prescribed (subsection (5)).



- (6) The PAC must report to the Assembly (subsection (6)).
- (7) If the Assembly adopts a Report of the PAC and requests a member of Cabinet to advise the Assembly on action taken in respect of the Report, the member concerned must respond within 6 weeks (subsection (7)).

**Accounting officers** (section 124)

- (1) The section establishes the office of Accountant General (subsection (1)).
- (2) The Accountant General compiles and manages the accounts of the Government, and is responsible for the custody and safety of public money (subsection (2)).
- (3) The most senior officer in each department or institution protecting good governance is designated an accounting officer (subsection (3)).

**Remuneration of Speaker and other members of the House of Assembly** (section 125)

- (1) This section places the remuneration of the members of the Assembly on a statutory footing for the first time.
- (2) The Speaker's and other members' remuneration is to be prescribed by an Act (subsection (1)).
- (3) Any Bill for remunerating members of the Assembly must be recommended by the Integrity Commission and published (subsection (2)).

**Audit** (section 126)

- (1) The principal change proposed is to require the Chief Auditor's Report to be published and for members of the public to have access to its contents.
- (2) The section establishes the office of Chief Auditor (subsection (1)).
- (3) He is to audit the accounts of the Assembly, all government departments and offices including institutions of good governance (subsection (2)).

- (4) He would submit his Reports to the Governor and to the Speaker who lays them before the Assembly (subsection (3)).
- (5) The Speaker shall publish any Report laid before the Assembly within one month (subsection (5)).

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- 125. Remuneration of Speaker and other members of Assembly
- 126. Audit

**2017 No.**

**The Anguilla Constitution Order 2017**

At the Court at Buckingham Palace, the day of 2017<sup>6</sup>

Present

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred upon Her by section 1(2) of the Anguilla Act 1980 and sections 6(1) and 17(4) of the West Indies Act 1967, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows.

**Citation, commencement and establishment of the Constitution**

1. (1) This Order may be cited as the Anguilla Constitution Order 2017.

(2) This Order shall come into force on the day on which the Assembly of Anguilla is dissolved next following the day on which this Order is made, which day is in this Order referred to as "the appointed day".

(3) On the appointed day the following provisions of this Order shall have effect as the Constitution of Anguilla; but until the day after the polling in the first general election in Anguilla after the appointed day,

- (a) the office of Premier shall continue to be called Chief Minister;
- (b) the Cabinet shall continue to be called Executive Council; and
- (c) no person shall be appointed to the office of Cabinet Secretary.

**PREAMBLE<sup>7</sup>**

Whereas the people of the territory of Anguilla have over centuries evolved with a distinct cultural identity and will which is the essence of an Anguillian;

Acknowledge that the society of Anguilla is based upon certain moral, spiritual and democratic values including a belief in God, the inherent dignity of the human person, the inalienable right of the freedom of the individual, and respect for fundamental rights and freedoms and the rule of law;

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<sup>6</sup> The commencement follows the format of the style of the Virgin Islands Constitution Order 2007 (hereinafter the "VI Constitution").

<sup>7</sup> As recommended by paragraph 4 of the 2006 Report of the Constitutional and Electoral Reform Commission (hereinafter "the 2006 Report"). The wording is taken from Rev Dr Clifton Niles' Committee's 2012 draft Constitution for Anguilla (hereinafter "Rev Niles' draft")



Mindful that the people of Anguilla have expressed a desire for their Constitution to reflect who they are as a people and a country and their quest for social justice, economic empowerment and political advancement, and self-determination;

Recognising that the people of Anguilla have a free and independent spirit, and have developed themselves and their country based on qualities of honesty, integrity, mutual respect, self-reliance and the ownership of land engendering a strong sense of belonging, kinship and pride;

Recalling that because of historical, economic and other reasons many of the people of Anguilla reside elsewhere but have and continue to have an ancestral connection and bond with Anguilla;

Accepting that Anguilla should be governed based on adherence to well-established democratic principles and institutions;

Affirming that the people of Anguilla have generally expressed their desire to become a self-governing people and to exercise the highest degree of control over the affairs of their country at this stage of its development; and

Noting that the United Kingdom, the administering power for the time being, has articulated a desire to enter into a modern partnership with Anguilla based on the principles of mutual respect, self-determination and transparency;

Now, therefore, the following provisions have effect as the Constitution of Anguilla:-

## **CHAPTER 1<sup>8</sup>**

### **PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS**

#### **Fundamental rights and freedoms of the individual**

2. Whereas every person in Anguilla is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely,

- (a) life, liberty, security of the person, the enjoyment of property and the protection of the law;
- (b) freedom of conscience, of expression, movement and of peaceful assembly and association; and
- (c) respect and protection for his private and family life,<sup>9</sup>

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<sup>8</sup> As suggested by Lolita Richardson's 2009 draft Constitution for Anguilla (hereinafter "Mrs Richardson's draft"), the Fundamental Rights are shifted to Chapter 1.

<sup>9</sup> Amended to follow section 1 of Mrs Richardson's draft.

the subsequent provisions of this Chapter shall have effect for the purpose of affording protection to the aforesaid rights and freedoms, subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by an individual does not prejudice the rights and freedoms of others or the public interest.

### **Protection of right to life**

3. (1) Every person has a right to life which shall be protected by law.<sup>10</sup>

(2) No person shall be deprived of his life intentionally.

(3) A person shall not be regarded as having been deprived of his life in contravention of this section if he dies as the result of the use, to such extent and in such circumstances as are permitted by law, of such force as is reasonably justifiable,

(a) for the defence of any person from violence or for the defence of property;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) for the purpose of suppressing a riot, insurrection or mutiny; or

(d) in order lawfully to prevent the commission by that person of a criminal offence, or if he dies as the result of a lawful act of war.

### **Protection of right to personal liberty**

4. (1) Every person has the right to liberty and security of the person which shall be protected by law.<sup>11</sup>

(2) No person shall be deprived of his personal liberty save as may be authorised by law in any of the following cases, that is to say,

(a) in consequence of his unfitness to plead to a criminal charge;

(b) in execution of the sentence or order of a court, whether established for Anguilla or some other country, in respect of a criminal offence of which he has been convicted;

(c) in execution of an order of the High Court or the Court of Appeal or such other court as may be prescribed by the Assembly on the grounds of his contempt of any such court or of another court or tribunal;

(d) in execution of the order of a court made in order to secure the fulfilment of any obligation imposed on him by law;

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<sup>10</sup> Amendment suggested by section 2 of Mrs Richardson's draft.

<sup>11</sup> Amendment suggested by section 3 of Mrs Richardson's draft.

- (e) for the purpose of bringing him before a court in execution of the order of a court;
- (f) upon reasonable suspicion of his having committed or of being about to commit a criminal offence under the law of Anguilla;
- (g) under the order of a court or with the consent of his parent or guardian, for his education or welfare during any period ending not later than the date when he attains the age of eighteen years;
- (h) for the purpose of preventing the spread of an infectious or contagious disease;
- (i) in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his care or treatment or the protection of the community;
- (j) for the purpose of preventing the unlawful entry of that person into Anguilla, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Anguilla or for the purpose of restricting that person while he is being conveyed through Anguilla in the course of his extradition or removal as a convicted prisoner from one country to another; or
- (k) to such extent as may be necessary in the execution of a lawful order requiring that person to remain within a specified area within Anguilla or prohibiting him from being within such an area or to such extent as may be reasonably justifiable for the taking of proceedings against that person relating to the making of any such order, or to such extent as may be reasonably justifiable for restraining that person during any visit that he is permitted to make to any part of Anguilla in which, in consequence of any other such order, his presence would otherwise be unlawful.

(3) Any person who is arrested or detained shall be informed orally and in writing as soon as reasonably practicable, in a language which he understands, of the reasons for his arrest or detention.<sup>12</sup>

(4) Any person who is arrested or detained shall have the right, at any stage and at his own expense, to retain and instruct without delay a legal representative of his own choice, and to hold private communication with such legal practitioner and, in the case of a minor, to communication with his parent or guardian.<sup>13</sup>

(5) Every person who is arrested shall be informed, as soon as reasonably practicable and in a language that he understands, of his rights under subsection (5); and that person shall also have the right, and shall be informed at the same time that he has the

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<sup>12</sup> As recommended by paragraph 12 of the 2006 Report.

<sup>13</sup> Suggested by section 3 of Mrs Richardson's draft.

right, to remain silent and to have one person informed by the quickest practicable means of his arrest and his whereabouts.<sup>14</sup>

(6) Any person who is arrested or detained,

(a) for the purpose of bringing him before a court in execution of the order of a court; or

(b) upon reasonable suspicion of his having committed or being about to commit a criminal offence under the law of Anguilla,

and who is not released, shall be brought within forty eight hours<sup>15</sup> before a court; and if any person arrested or detained upon reasonable suspicion of his having committed or being about to commit a criminal offence under the law of Anguilla is not tried within a reasonable time, then, without prejudice to any further proceedings which may be brought against him, he shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.

(7) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation for such unlawful arrest or detention from that other person, from any person or authority on whose behalf that other person was acting or from them both; but a judicial officer or an officer of a court or a police officer acting in pursuance of the order of a judicial officer shall not be personally liable to pay compensation under this subsection in respect of anything done by him in good faith in the discharge of the functions of his office and any liability to pay any such compensation in respect of that thing shall be a liability of the Crown.<sup>16</sup>

(8) Where any person is brought before a court in execution of the order of a court in any proceedings or upon suspicion of his having committed or being about to commit an offence, he shall not be thereafter further held in custody in connection with those proceedings or that offence save upon the order of a court.

(9) For the purposes of subsection (2)(b) of this section a person charged before a court with a criminal offence in respect of whom a special verdict has been returned that he was guilty of the act or omission charged but was insane when he did the act or made the omission shall be regarded as a person who has been convicted of an offence and the detention of a person in consequence of such a verdict shall be regarded as detention in execution of the order of a court.

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<sup>14</sup> Suggested by section 3 of Mrs Richardson's draft.

<sup>15</sup> As recommended by paragraph 13 of the 2006 Report.

<sup>16</sup> Wording suggested by section 3 of Mrs Richardson's draft.

### **Protection of right of prisoners to humane treatment<sup>17</sup>**

5. (1) All persons deprived of their liberty (in this section referred to as “prisoners”) have the right to be treated with humanity and with respect for the inherent dignity of the human person.

(2) Save where the interests of defence, public safety, public order, public morality, public health or the administration of justice otherwise require, unconvicted prisoners shall be segregated from convicted prisoners, and every unconvicted prisoner shall be entitled to be treated in a manner appropriate to his status as such.

(3) Minor prisoners shall be segregated from adult prisoners and every minor prisoner shall be treated in a manner appropriate to his age and legal status and, if he is an unconvicted prisoner and unless he is earlier released, to have any criminal proceedings against him pursued with the greatest possible expedition.

### **Protection from slavery and forced labour**

6. (1) No person shall be held in slavery or servitude.

(2) No person shall be required to perform forced labour.

(3) For the purposes of this section, the expression “forced labour” does not include,

- (a) any labour required in consequence of the sentence or order of a court;
- (b) labour required of any person while he is lawfully detained that, though not required in consequence of the sentence or order of a court, is reasonably necessary in the interests of hygiene or for the maintenance of the place at which he is detained;
- (c) any labour required of a member of a disciplined force in pursuance of his duties as such or, in the case of a person who has conscientious objections to service as a member of a naval, military or air force, any labour that that person is required by law to perform in place of such service;
- (d) any labour required during any period of public emergency or in the event of any other emergency or calamity that threatens the life and well-being of the community, to the extent that the requiring of such labour is reasonably justifiable in the circumstances of any situation arising or existing during that period or as a result of that other emergency or calamity, for the purpose of dealing with that situation.

### **Protection of freedom of movement**

7. (1) No person shall be deprived of his freedom of movement, and, for the purposes of this section the said freedom means the right to move freely throughout Anguilla, the

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<sup>17</sup> New provision suggested by section 4 of Mrs Richardson’s draft.

right to reside in any part of Anguilla, the right to enter Anguilla, the right to leave Anguilla and immunity from expulsion from Anguilla.

(2) Any restriction on a person's freedom of movement which is involved in his lawful detention shall not be held to be inconsistent with or in contravention of this section.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision,

- (a) for the imposition of restrictions on the movement or residence within Anguilla of any person or on any person's right to leave Anguilla that are reasonably required in the interests of defence, public safety or public order;
- (b) for the imposition of restrictions on the movement or residence within Anguilla or on the right to leave Anguilla of persons generally or any class of persons in the interests of defence, public safety, public order, public morality or public health and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society;
- (c) for the imposition of restrictions on the movement or residence within Anguilla of any person who does not belong to Anguilla or the exclusion or expulsion from Anguilla of any such person;
- (d) for the imposition of restrictions on the acquisition or use by any person of land or other property in Anguilla;
- (e) for the imposition of restrictions on the movement or residence within Anguilla of public officers, or on the right of public officers to leave Anguilla;
- (f) for the removal of a person from Anguilla to be tried or punished in some other country for a criminal offence under the law of that other country or to undergo imprisonment in that other country in execution of the sentence of a court in respect of a criminal offence under the law of Anguilla of which he has been convicted; or
- (g) for the imposition of restrictions on the right of any person to leave Anguilla that are reasonably required in order to secure the fulfilment of any obligations imposed on that person by law and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

(4) If any person whose freedom of movement has been restricted by virtue only of such a provision as is referred to in subsection (3)(a) of this section so requests at any time during the period of that restriction not earlier than six months after the restriction was imposed or six months after he last made such a request during that period, his case

shall be reviewed by an independent and impartial tribunal established by law and presided over by a person appointed by the Chief Justice from among persons who hold the office of magistrate in Anguilla or who are entitled to practise or to be admitted to practise in Anguilla as barristers.

(5) On any review by a tribunal in pursuance of subsection (4) of this section of the case of any person whose freedom of movement has been restricted, the tribunal may make recommendations concerning the necessity or expediency of continuing that restriction to the authority by whom it was ordered and, unless it is otherwise provided by law, that authority shall be obliged to act in accordance with any such recommendations.

### **Protection from inhumane treatment**

**8.** No person shall be subjected to torture or to inhuman or degrading punishment or other treatment.

### **Protection from deprivation of property**

**9.** (1) No interest in or right over any property of any description shall be compulsorily acquired, and no such property shall be compulsorily taken possession of, except by or under the provisions of a written law which,

- (a) prescribes the principles on which and the manner in which adequate compensation thereto is to be determined;
- (b) requires the prompt payment in money of such adequate compensation;<sup>18</sup>
- (c) prescribes the manner in which the compensation is to be given; and
- (d) the manner of enforcing the right to any such compensation.

(2) Nothing in this section shall be construed as affecting the making or operation of any law so far as that law provides for the taking of possession or acquisition of any property, interest or right,

- (a) in satisfaction of any tax, rate or due; or
- (b) by way of penalty for breach of the law, whether under civil process or after conviction of a criminal offence under the law of Anguilla; or
- (c) upon the attempted removal of the property in question out of or into Anguilla in contravention of any law; or
- (d) by way of the taking of a sample for the purpose of any law; or
- (e) where the property consists of an animal upon its being found trespassing or straying; or

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<sup>18</sup> As recommended by paragraph 17 of the 2006 Report.

- (f) as an incident of a lease, tenancy, licence, mortgage, charge, bill of sale, pledge or contract; or
- (g) by way of the vesting or administration of trust property, enemy property, or the property of persons adjudged or otherwise declared bankrupt or insolvent, persons of unsound mind, deceased persons, or bodies corporate or unincorporate in the course of being wound up; or
- (h) in the execution of judgments or orders of courts; or
- (i) by reason of its being in a dangerous state or injurious to the health of human beings, animals or plants; or
- (j) in consequence of any law with respect to the limitation of actions; or
- (k) for so long only as may be necessary for the purposes of any examination, investigation, trial or inquiry or, in the case of land, the carrying out thereon,
  - (i) of work of soil conservation or of conservation of other natural resources; or
  - (ii) of work relating to agricultural development or improvement which the owner or occupier of the land has been required, and has without reasonable excuse refused or failed, to carry out.

(3) Nothing in this section shall be construed as affecting the making or operation of any law so far as it provides for the orderly marketing or production or growth or extraction of any agricultural product or mineral or any article or thing prepared for market or manufactured therefor or for the reasonable restriction of the use of any property for the purpose of safeguarding the interests of others or the protection of tenants, licensees or others having rights in or over such property.

(4) Nothing in this section shall be construed as affecting the making or operation of any law for the compulsory taking of possession in the public interest of any property, or the compulsory acquisition in the public interest of any interest in or right over property, where that property, interest or right is held by a body corporate which is established for public purposes by any law and in which no monies have been invested other than monies provided by the Assembly.

(5) In this section "compensation" means the consideration to be given to a person for any interest or right which he may have in or over property which has been compulsorily taken possession of or compulsorily acquired as prescribed and determined in accordance with the provisions of the law by or under which the property or such right or interest has been compulsorily taken possession of or compulsorily acquired.



## **Protection from arbitrary search or entry**

**10.** (1) Every person has the right to respect for his private and family life, his home and his correspondence and, except with his own consent, no person shall be subjected to the search of his person or his property or the entry by others on his premises.<sup>19</sup>

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision,

- (a) that is reasonably required in the interests of defence, public safety, public order, public morality, public health, public revenue, town and country planning or the development and utilisation of any property in such a manner as to promote the public benefit;
- (b) that authorises an officer or agent of the Government of Anguilla, a local government authority or a body corporate established by law for public purposes to enter on the premises of any person in order to inspect those premises or anything thereon for the purpose of any tax, rate or due or in order to carry out work connected with any property that is lawfully on those premises and that belongs to that Government, authority or body corporate, as the case may be;
- (c) that is reasonably required for the purpose of preventing or detecting crime;
- (d) that is reasonably required for the purpose of protecting the rights or freedoms of other persons; or
- (e) that authorises, for the purpose of enforcing the judgment or order of a court in any civil proceedings, the search of any person or property by order of a court or entry upon any premises by such order, and except so far as that provision or, as the case may be, anything done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

## **Provision to secure protection of law**

**11.** (1) Whenever any person is charged with a criminal offence he shall, unless the charge is withdrawn, be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

(2) Any court or other authority prescribed by law for the determination of the existence or the extent of civil rights or obligations shall be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other authority, the case shall be given a fair hearing within a reasonable time.

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<sup>19</sup> Wording suggested by section 9 of Mrs Richardson's draft.

(3) Except with the agreement of all the parties thereto all proceedings of every court and proceedings relating to the determination of the existence or the extent of a person's civil rights or obligations before any other authority, including the announcement of the decision of the court or other authority, shall be held in public.

(4) Nothing in subsection (3) of this section shall prevent any court or any other authority such as is mentioned in that subsection from excluding from the proceedings persons other than the parties thereto and their legal representatives,

(a) in appeal proceedings under any law relating to income tax; or

(b) to such extent as the court or other authority,

(i) may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice; or

(ii) may be empowered or required by law to do so in the interests of defence, public safety, public order, public morality, the welfare of persons under the age of eighteen years or the protection of the private lives of persons concerned in the proceedings.<sup>20</sup>

(5) Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved or has pleaded guilty:

Provided that nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this subsection to the extent that the law in question imposes upon any person charged as aforesaid the burden of proving particular facts.

(6) Every person who is charged with a criminal offence,

(a) shall be informed orally and in writing as soon as reasonably practicable, in a language which he understands, of the nature of the offence charged;

(b) shall be given adequate time and facilities for the preparation of his defence;

(c) shall be permitted to defend himself or herself in person or, at his own expense, by a legal representative of his own choice, at his own expense;

(d) shall be afforded facilities to examine in person or by his legal representative the witnesses called by the prosecution before any court and to obtain the attendance of witnesses, subject to the payment of their reasonable expenses, and carry out the examination of such witnesses to testify on his behalf before the court on the same condition as those applying to witnesses called by the prosecution;

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<sup>20</sup> This wording removes the previous provision for automatic exclusion of Chamber proceedings, as recommended by paragraph 19 of the 2006 Report.

- (e) shall be permitted to have without payment the assistance of an interpreter if he cannot understand the English language; and
- (f) shall, when charged on information or indictment in the High Court, have the right to trial by jury or before a judge sitting alone, as he may choose.<sup>21</sup>
- (7) Except with his own consent, the trial of a person charged with a criminal offence shall not take place in his absence, unless,
- (a) that person so behaves in the court as to render the continuance of the proceedings in his presence impracticable and the court has ordered that person to be removed and the trial to proceed in his absence; or
- (b) the court, being satisfied that no injustice will result, orders the trial to proceed in that person's absence on account of the abscondment or the involuntary illness or incapacity of that person.<sup>22</sup>
- (8) No person shall be held to be guilty of a criminal offence on account of any act or omission which did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence which is severer in degree or description than the maximum penalty which might have been imposed for that offence at the time when it was committed.
- (9) No person who shows that he has been tried by any competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for other criminal offence of which he could have been convicted at the trial for that offence save upon the order of a superior court made in the course of appeal proceedings relating to the conviction or acquittal; and no person shall be tried for a criminal offence if he shows that he has been pardoned for that offence:
- Provided that nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this subsection to the extent that the law in question authorises any court to try a member of a disciplined force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under the disciplinary law of that force; but any court so trying such a member and convicting him shall in sentencing him to any punishment take into account any punishment awarded him under that disciplinary law.
- (10) When a person is tried for any criminal offence, the accused person or any person authorised by him in that behalf shall, if he so requires and subject to payment of such reasonable fee as may be prescribed by law, be given within a reasonable time after judgment a copy for the use of the accused person of any record of the proceedings made by or on behalf of the court.

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<sup>21</sup> Amendment suggested by section 10 of Mrs Richardson's draft.

<sup>22</sup> Amendment suggested by section 10 of Mrs Richardson's draft.

(11) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.

(12) When a person, has by a final decision of a court, been convicted of a criminal offence and, subsequently, his conviction has been quashed, or he has been pardoned, on the ground that a newly-disclosed fact shows that there has been a miscarriage of justice, he shall be compensated out of public funds for any punishment that he has suffered as a result of the conviction unless it is proved that the non-disclosure in time of that fact was wholly or partly his fault.<sup>23</sup>

(13) In the case of any person who is held in lawful detention the provisions of subsection (1), subsection (3) and paragraphs (c) and (d) of subsection (6) of this section shall not apply in relation to his trial for a criminal offence under the law regulating the discipline of persons held in such detention.

(14) In this section “criminal offence” means a criminal offence under the law of Anguilla.

### **Protection of freedom of conscience**

**12.** (1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of conscience, including freedom of thought and of religion, freedom to change his religion or belief and freedom, either alone or in community with others, and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.

(2) Except with his own consent (or, if he is a person under the age of eighteen years, the consent of his parent or guardian) no person attending any place of education shall be compelled to receive religious instruction or to take part in or attend any religious ceremony or observance if that instruction, ceremony or observance relates to a religion other than his own.

(3) Every religious community shall be entitled, at its own expense, to establish and maintain places of education and to manage any place of education which it wholly maintains; and no such community shall be prevented from providing religious instruction for persons of that community in the course of any education provided at any places of education which it wholly maintains or in the course of any education which it otherwise provides.

(4) No person shall be compelled to take any oath that is contrary to his religion or belief or to take any oath in a manner that is contrary to his religion or belief.

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<sup>23</sup> Amendment suggested by section 10 of Mrs Richardson’s draft.

(5) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision which is reasonably required,

- (a) in the interests of defence, public safety, public order, public morality or public health;
- (b) for the purpose of protecting the rights and freedoms of other persons, including the right to observe and practise any religion without the unsolicited intervention of members of any other religion; or
- (c) for the purpose of regulating educational institutions in the interests of persons who receive or may receive instruction in them, and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

(6) References in this section to a religion shall be construed as including references to a religious denomination, and cognate expressions shall be construed accordingly.

#### **Protection of freedom of expression<sup>24</sup>**

**13.** (1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, and for the purposes of this section the said freedom includes the freedom to hold opinions and to receive and impart ideas and information without interference, and freedom from interference with his correspondence and other means of communication.

(2) All publicly owned media shall be made equally available to all political parties and movements on payment of such reasonable charges as may in appropriate cases be applied.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision,

- (a) that is reasonably required
  - (i) in the interests of defence, public safety, public order, public morality or public health;
  - (ii) for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts or regulating telephony, telegraphy, posts, wireless, broadcasting or

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<sup>24</sup> Adapted from section 12 of Mrs Richardson's draft.

television or other means of communication or regarding public exhibitions or public entertainments;<sup>25</sup> or

- (b) that imposes restrictions upon public officers or teachers that are reasonably required for the purpose of ensuring the proper performance of their functions:

Provided that the provision or, as the case may be, the thing done under the authority thereof is shown to be reasonably justifiable in a democratic society.

### **Protection of freedom of assembly and association**

**14.** (1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of peaceful assembly and association, that is to say, his right peacefully to assemble freely and associate with other persons and in particular to form or belong to trade unions or other associations for the protection of his interests.

(2) No person shall be required as a condition of employment to subscribe to any organisation for membership or admission; nor shall any person be required to pay dues or other compensation to secure or enjoy such employment or the right thereto; nor shall any person be prohibited from free access to his place of employment or return therefrom by virtue of his failure to belong or subscribe to any organisation.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision,

- (a) that is reasonably required,

(i) in the interests of defence, public safety, public order, public morality or public health; or

(ii) for the purpose of protecting the rights or freedoms of other persons; or

- (b) that imposes restrictions upon public officers:

Provided that,

(i) paragraph (a)(ii) of this subsection shall not apply in relation to a provision that operates so as to prohibit a trade union or other association from carrying out activities preventing or restricting persons who are not members of that trade union or other association from pursuing a particular trade, profession or employment unless that provision is contained in a written law;

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<sup>25</sup> Amendment suggested by section 12 of Mrs Richardson's draft.

- (ii) the provision or, as the case may be, the thing done under the authority of any such law is shown to be reasonably justifiable in a democratic society.

**Protection from discrimination on the grounds of race, etc.<sup>26</sup>**

**15.** (1) Subject to the provisions of subsections (4), (5) and (7) of this section, no law shall make any provision which is discriminatory either of itself or in its effect.

(2) Subject to the provisions of subsections (6), (7) and (8) of this section, no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.

(3) In this section, the expression “discriminatory” means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, place of origin, political opinions, colour, creed or sex whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.

(4) Subsection (1) of this section shall not apply to any law so far as that law makes provision,

(a) with respect to persons who do not belong to Anguilla;

(b) for the application, in the case of persons of any such description as is mentioned in subsection (3) of this section (or of persons connected with such persons), of the law with respect to adoption, marriage, divorce, burial, devolution of property on death or other like matters which is the personal law of persons of that description; or

(c) for the imposition of taxation or appropriation of revenue by the Government of Anguilla or any local authority or body for local purposes; or

(d) for the provision of services in favour of Anguillians.<sup>27</sup>

(5) Nothing contained in any law shall be held to be inconsistent with or in contravention of subsection (1) of this section to the extent that it makes provision with respect to qualifications for service as a public officer, or as a member of a disciplined force or for the service of a local government authority or a body corporate established by any law for public purposes.

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<sup>26</sup> As recommended by paragraph 23 of the 2006 Report. The wording is taken from section 21 of Rev Niles’ draft.

<sup>27</sup> This subsection permitting discrimination in the provision of services in favour of Anguillians has been added to the recommendations of the 2006 Report at the request of Members of the House of Assembly in 2009.

(6) Subsection (2) of this section shall not apply to anything which is expressly or by necessary implication authorised to be done by any such provision of law as is referred to in subsection (4) or (5) of this section.

(7) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision,

(a) whereby persons of any such description as is mentioned in subsection (3) of this section may be subjected to any restriction on the rights and freedoms guaranteed by sections 7, 10, 12, 13 and 14 of this Constitution, being such a restriction as is authorised by paragraph (a), (b) or (g) of subsection (3) of section 7, subsection (2) of section 10, subsection (5) of section 12, subsection (2) of section 13, or subsection (3) of section 14, as the case may be; or

(b) which is reasonably justifiable in a democratic society for the protection or well-being of women.<sup>28</sup>

(8) Nothing in subsection (2) of this section shall affect any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court that is vested in any person by or under this Constitution or any other law.

### **Protection of the environment<sup>29</sup>**

**16.** (1) The Assembly and the Government shall, in all their decisions, have due regard to the need to foster and protect an environment that is not harmful to the health or well-being of present and future generations, while promoting justifiable economic and social development.

(2) To this end the Assembly and the Government should adopt reasonable legislative and other measures to protect the built heritage, the wildlife and the land and sea biodiversity of Anguilla that,

(a) limit pollution and ecological degradation;

(b) promote conservation and biodiversity; and

(c) secure ecologically sustainable development and use of natural resources.

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<sup>28</sup> A question has been asked whether discriminatory laws for the protection of women are still necessary. It is suggested that such matters as human trafficking of women for prostitution, protection of health in matters of family planning and pregnancy, genital mutilation, and other forms of violence against women justify retaining this exception.

<sup>29</sup> This provision is taken from section 18 of the Cayman Islands Constitution and section 18 of the TCI Constitution.



### **Protection of children<sup>30</sup>**

**17.** The Assembly may, in addition to any rights and freedoms provided in this Chapter which afford protection to children, enact such laws as it considers fit to promote the well-being and welfare of children and to afford them protection from any harm, exploitation, neglect, abuse, maltreatment or degradation and to provide them with such facilities as would aid their growth and development.

### **Derogations from fundamental rights and freedoms under emergency powers**

**18.** Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of section 4 or section 14 of this Constitution to the extent that the law authorises the taking during any period of public emergency of measures that are reasonably justifiable for dealing with the situation that exists in Anguilla during that period.

### **Protection of persons detained under emergency laws<sup>31</sup>**

**19. (1)** When a person is detained by virtue of any such law as is referred to in section 7 of this Constitution the following provisions shall apply, that is to say,

- (a) he shall, as soon as reasonably practicable and in any case not more than four days after the commencement of his detention, be furnished with a statement in writing in a language that he understands specifying in detail the grounds upon which he is detained;
- (b) not more than fourteen days after the commencement of his detention, a notification shall be published in the Gazette stating that he has been detained and giving particulars of the provision of law under which his detention is authorised;
- (c) not more than one month after the commencement of his detention and thereafter during his detention at intervals of not more than six months, his case shall be reviewed by an independent and impartial tribunal established by law and presided over by a person appointed by the Chief Justice from among persons who are or have been judges of the High Court or the Court of Appeal or are qualified for appointment as such judges;
- (d) he shall be afforded reasonable facilities to consult a legal representative of his own choice who shall be permitted to make representations to the tribunal appointed for the review of the case of the detained person; and

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<sup>30</sup> This provision is taken from section 30 of the VI Constitution.

<sup>31</sup> This wording is taken from section 23 of Rev Niles' draft.

(e) at the hearing of his case by the tribunal appointed for the review of his case he shall be permitted to appear in person or by a legal representative of his own choice.

(2) On any review by a tribunal in pursuance of this section of the case of a detained person, the tribunal may make recommendations concerning the necessity or expediency of continuing his detention to the authority by which it was ordered but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendations.

(3) Nothing contained in subsection (1)(d) or subsection (1)(e) of this section shall be construed as entitling a person to legal representation at public expense, except when the interests of justice so require.<sup>32</sup>

### **Enforcement of protective provisions**

**20.** (1) If any person alleges that any of the provisions of sections 3 to 17 (inclusive) of this Constitution has been, or is being, or is likely to be,<sup>33</sup> contravened in relation to him (or, in the case of a person who is detained, if any other person alleges such a contravention in relation to the detained person), then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the High Court for redress.

(2) The High Court shall have original jurisdiction to hear and determine any application made by any person in pursuance of subsection (1) of this section and may grant such remedies or reliefs, make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of, any of the provisions of the said sections 3 to 17 (inclusive) to the protection of which the person concerned is entitled.

(3) The High Court shall not decline to exercise its powers under subsection (2) solely on the ground that it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law.<sup>34</sup>

(4) If in any proceedings in any court (other than the Court of Appeal, the High Court or a court martial) any question arises as to the contravention in any of the provisions of sections 3 to 17 (inclusive) of this Constitution, the person presiding in that court may, and shall if any party to the proceedings so requests, refer the question to the High Court unless, in his opinion, the raising of the question is merely frivolous or vexatious.

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<sup>32</sup> Amendment suggested by section 16 of Mrs Richardson's draft.

<sup>33</sup> "or is likely to be" inserted as recommended by paragraph 26 of the 2006 Report.

<sup>34</sup> Amendment suggested by section 17 of Mrs Richardson's draft. Removes "other means of redress" as recommended by paragraph 27 of the 2006 Report.

(5) Where any question is referred to the High Court in pursuance of subsection (3) of this section, the High Court shall give its decision upon the question and the court in which the question arose shall dispose of the case in accordance with that decision or, if that decision is the subject of an appeal to the Court of Appeal or to Her Majesty in Council, in accordance with the decision of the Court of Appeal or, as the case may be, of Her Majesty in Council.

(6) An appeal shall lie as of right to the court of Appeal from any final determination of any application or question by the High Court under this section, and an appeal shall lie as of right to Her Majesty in Council from the final determination by the Court of Appeal of the appeal in any such case.<sup>35</sup>

(7) The Assembly may confer or authorise the conferment on the High Court of such powers in addition to those conferred by this section as may appear to be necessary or desirable for the purpose of enabling the Court more effectively to exercise the jurisdiction conferred on it by this section.

(8) The Chief Justice may make rules with respect to the practice and procedure of the High Court in relation to the jurisdiction and powers conferred on it by or under this section (including rules with respect to the time within which applications may be brought and references shall be made to the High Court).

### **Declaration of emergency**

**21.** (1) The Governor may, after consultation with Cabinet and acting on its advice,<sup>36</sup> by Proclamation published in the manner provided in subsection (2), declare that a state of emergency exists for the purposes of this Chapter.

(2) A proclamation shall be taken to be published if it is published in the Gazette or in a newspaper published in Anguilla, or if it is posted in prominent public places or announced on the radio.

(3) Every declaration of emergency shall lapse-

(a) in the case of a declaration made when the Assembly is sitting, at the expiration of a period of seven days beginning with the date of the publication of the declaration; and

(b) in any other case, at the expiration of a period of twenty-one days beginning with the date of publication of the declaration, unless it has in the meantime been approved by a resolution of the Assembly supported by the votes of a majority of all the members of the House.

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<sup>35</sup> Amendments suggested by section 17 of Mrs Richardson's draft.

<sup>36</sup> As recommended by paragraph 28 of the 2006 Report.

(4) A declaration of emergency may at any time be revoked by the Governor by Proclamation published aforesaid.

(5) A declaration of emergency that has been approved by a resolution of the Assembly in pursuance of subsection (3) of this section shall, subject to the provisions of subsection (4) of this section, remain in force so long as that resolution remains in force and no longer.

(6) A resolution of the Assembly passed for the purposes of this section shall remain in force for 90 days or such shorter period as may be specified therein:

Provided that any such resolution may be extended from time to time by a further such resolution supported by the votes a majority of all the members of the House, each extension not exceeding 90 days from the date of the resolution effecting the extensions; and any such resolution may be revoked at any time by a resolution supported by the votes of a majority of all the members of the House.

(7) Any provision of this section that a declaration of emergency shall lapse or cease to be in force at any particular time is without prejudice to the making of a further such declaration whether before or after that time.

## **CHAPTER 2 INTERPRETATION**

### **Interpretation**

**22.** (1) In this Constitution, unless it is otherwise provided or required by the context,

“Accountant General” means the officer established by section 124;

“Advisory Commission on the Prerogative of Mercy” means the Commission established by section 100;

“Anguillian Status Commission” means the Commission established by section 99;

“Appropriations Committee” means the Committee of the Assembly established by section 121;

“Assembly” means the House of Assembly established by section 53;

“Attorney-General” means the officer established by section 40;

“Cabinet Secretary” means the officer established by section 47 and appointed in accordance with section 49(5);

“Chief Auditor” means the officer established by section 126;

“the Chief Justice” means the Chief Justice of the Eastern Caribbean Supreme Court;

“Complaints Commissioner” means the Commissioner established by section 105;

“contravention”, in relation to any requirement, includes a failure to comply with that requirement, and cognate expressions shall be construed accordingly;

“Court of Appeal” means the Court of Appeal established by the Supreme Court Order 1967;

“Director of Public Prosecutions” means the officer established by section 41;

“disciplinary law” means a law regulating the discipline of any disciplined force;

“disciplined force” means,

(a) a naval, military or air force;

(b) the Police Service; or

(c) a prison service;

“dollars” means dollars in the currency of Anguilla or the Eastern Caribbean Currency Authority;

“election” means election of an elected member of the Assembly and “general election” shall be construed accordingly;

“Electoral District Boundary Commission” means the Commission established by section 86;

“Financial Services Commission” means the Commission established by section 93;

“Freedom of Information” means the right established by section 108;

“Freedom of Information Commissioner” means the Commissioner established by section 108;

“functions” includes jurisdictions, powers and duties;

“Gazette” means the Official Gazette of Anguilla;

“Government of Anguilla” means the body defined in section 34;

“High Court” means the High Court established by the Supreme Court Order 1967;

“House of Assembly” means the House of Assembly established by section 53;

“Human Rights Commissioner” means the Commissioner established by section 104;

“Integrity Commission” means the Commission established by section 97;

“Judicial and Legal Services Commission” means the Commission established by section 95;

“law” includes any instrument having the force of law made in exercise of a power conferred by a law;

“legal practitioner” means a licensed legal practitioner as prescribed by law;

“legal representative” means a licensed legal practitioner;

“member”, in relation to a disciplined force, includes any person who, under the law regulating the discipline of that force, is subject to that discipline;

“minor” means a person who has not attained the age of 18 years;

“National Security Commission” means the Commission established by section 92;

“Police Complaints Commissioner” means the Commissioner established by section 106;

“the Police Service” means any police service established for Anguilla under any law in force in Anguilla;

“Police Service Commission” means the Commission established by section 90;

“Public Accounts Committee” means the Committee established by section 123;

“public authorities” include public servants, statutory corporations and boards, and other public bodies, excepting the Governor and the Deputy Governor;

“public office” means, subject to section 23, any office of emolument in the public service;

“public officer” means the holder of any public office and includes any person appointed to act in any such office;

“Public Procurement Commissioner” means the Commissioner established by section 102;

“public service” means the service of the Crown in a civil capacity in respect of the government of Anguilla;

“Public Service Commission” means the Commission established by section 88;

“Register of Interests” means the Register established by section 98;

“session”, in relation to the Assembly, means the sittings of the House commencing when the House first meets after being constituted by this Constitution, or after its prorogation or dissolution at any time, and terminating when the House is next prorogued or is dissolved without having been prorogued;

“sitting”, in relation to the Assembly, means a period during which the House is sitting continuously without adjournment and includes any period during which the House is in committee;

“Standing Committee” means a Committee of the Assembly provided for by section 68;

“Teaching Service Commission” means the Commission established by section 89.

(2) In this Constitution, unless it is otherwise provided or required by the context, any reference to the holder of an office by a term designating or describing his office shall be construed as including a reference to any person who, under and to the extent of any authority in that respect, is for the time being performing the functions of that office.

(3) In this Constitution, unless it is otherwise provided or required by the context, references to the functions of the Governor shall be construed as references to his powers and duties in exercise of the executive authority of Anguilla and to any other powers or duties conferred or imposed on him as Governor by or under this Constitution or any other law.

(4) A “period of public emergency” means any period during which,

(a) Her Majesty is at war; or

(b) a declaration of emergency is in force under section 18 of this Constitution.

(5) In relation to any person who is a member of a disciplined force raised under the law of Anguilla, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of Chapter 1 other than sections 3, 6 and 7 of this Constitution.

(6) In relation to any person who is a member of a disciplined force raised otherwise than as aforesaid and lawfully present in Anguilla, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of Chapter 1.

(7) In this Constitution, unless there is something in the subject or context inconsistent with such construction, or unless it is therein otherwise expressly provided, words importing the masculine gender includes the female gender.<sup>37</sup>

### **References to public office<sup>38</sup>**

**23.** (1) For the purposes of this Constitution, a person shall not be considered to hold a public office by reason only that,

(a) he is in receipt of a pension or other like allowance in respect of public service; or

(b) he is in receipt of any remuneration or allowances in respect of his tenure of the office of Minister, Speaker, Deputy Speaker or Member of the Assembly, or member of the Public Service Commission, the Teaching Service Commission, the Judicial and Legal Services Commission, the Police Service Commission, or any other Commission.

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<sup>37</sup> Although it is the modern preference, it has proven to be unduly pedantic and cumbersome to replace “he”, “his” and “him” everywhere in the Constitution with “he or she”, “his or her”, and “him or her”.

<sup>38</sup> Wording taken from section 3 of the VI Constitution.

(2) If it is provided by any law in force in Anguilla that an office shall not be a public office for the purposes of section 55(1)(a), this Constitution shall have effect accordingly as if that provision of that law were enacted herein.

(3) References in Chapter 5 to public offices shall not be construed as including references to,

(a) the office of a member of any board, committee or other similar body (whether incorporated or not) established by any law in force in Anguilla; or

(b) any office of emolument under any local government council or authority in Anguilla.

### **Appointments<sup>39</sup>**

**24.** (1) In this Constitution, unless it is otherwise provided or required by the context, any reference to power to make appointments to any office shall be construed as including a reference to power to make appointments on promotion or transfer to that office and to power to appoint a person to perform the functions of that office during any period when it is vacant or the holder of it is unable (whether by reason of absence or infirmity of body or mind or any other cause) to perform those functions.

(2) Where by this Constitution any person is directed, or power is conferred on any person or authority to appoint a person, to perform the functions of an office if the holder of that office is unable to perform those functions, the validity of any performance of those functions by the person so directed or of any appointment made in exercise of that power shall not be called in question in any court on the ground that the holder of the office is not unable to perform the functions of that office.

(3) Where this Constitution vests in any person power to make appointments to any office, a person may be appointed to that office, notwithstanding that some other person may be holding that office, when that other person is on leave of absence pending relinquishment of that office; and where two or more persons are holding the same office by reason of an appointment made in pursuance of this subsection, then, for the purposes of any function conferred on the holder of that office, the person last appointed to the office shall be deemed to be the sole holder of the office.

### **Re-election or reappointment<sup>40</sup>**

**25.** Any person who has vacated his seat in the Assembly or has vacated any office constituted by or under this Constitution may, if qualified, again be elected as a member of the House or appointed to that office, as the case may be, from time to time in accordance with this Constitution.

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<sup>39</sup> Taken from section 4 of the VI Constitution.

<sup>40</sup> Wording taken from section 5 of the VI Constitution.



### **Removal from office<sup>41</sup>**

**26.** In this Constitution, unless it is otherwise provided or required by the context, any reference to power to remove a public officer from office shall be construed as including a reference to a power conferred by any law to remove or permit that officer to retire from the public service.

### **Resignation<sup>42</sup>**

**27.** For the purposes of this Constitution, the resignation of the holder of any office that is required to be addressed to any person shall have effect from the time that it is received by that person, unless otherwise specified in the letter of resignation.

### **Power to amend or revoke instruments**

**28.** Where any power is conferred by this Constitution to make any proclamation, order or regulations or to give any directions, the power shall be construed as including a power exercisable in like manner to amend or revoke any such proclamation, order, regulations or directions.

## **CHAPTER 3**

### **THE GOVERNOR**

#### **The Governor<sup>43</sup>**

**29.** (1) There shall be a Governor of Anguilla, who shall be appointed by Her Majesty and hold office during Her Majesty's pleasure, who shall be Her Majesty's Representative in Anguilla.

(2) The Governor shall have such powers and duties as are conferred or imposed on him by this Constitution or any other law and such other functions as Her Majesty may from time to time be pleased to assign to him.

(3) Subject to the provisions of this Constitution and of any other law by which any such powers or duties are conferred or imposed upon him, the Governor shall do and execute all things that belong to his office according to such Instructions, if any, as Her Majesty may from time to time see fit to give him; but no court shall enquire whether or not he has complied with any such Instructions.

(4) A person appointed to the office of Governor shall, before entering upon the functions of that office, make oaths of allegiance and for the due execution of that office in the forms set out in the Schedule to this Constitution.

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<sup>41</sup> Wording taken from section 6 of the VI Constitution.

<sup>42</sup> Wording taken from section 7 of the VI Constitution.

<sup>43</sup> As recommended by paragraph 30 of the 2006 Report. The wording is taken from section 8 of the VI Constitution.

(5) The Premier and the Leader of the Opposition shall be consulted before the appointment of any person to the office of Governor.<sup>44</sup>

### **Office of Deputy Governor**

**30.** (1) There shall be a Deputy Governor who shall be such person, being an Anguillian<sup>45</sup> as defined in section 99 of this Constitution, as Her Majesty may designate as such by instructions given by Her Majesty through a Secretary of State and shall hold office during Her Majesty's pleasure.

(2) When a Deputy Governor is to be appointed, the Premier and the Leader of Opposition shall jointly propose three (3) names to the Secretary of State who shall choose one (1) of them. If there is no agreement on the three names, all the applications shall be forwarded to the Secretary of State for His decision.

(3) The Governor, acting in his discretion, may by writing under his hand, authorise the Deputy Governor to exercise for and on behalf of the Governor, subject to such exceptions and conditions as the Governor may from time to time specify, any or all of the functions of the office of Governor.

(4) The powers and authority of the Governor shall not be affected by any authority of the Deputy Governor under subsection (3) of this section and, subject to the provisions of this Constitution and of any law by which any function which the Deputy Governor is authorised to exercise is conferred, the Deputy Governor shall comply with such instructions relating to the exercise of that function as the Governor, acting in his discretion, may from time to time address to him:

Provided that the question whether or not the Deputy Governor has in any matter complied with any such instructions shall not be enquired into in any court.

(5) Any authority given under subsection (3) of this section may at any time be varied or revoked by Her Majesty by instructions given through a Secretary of State or by the Governor, acting in his discretion, by writing under his hand.

(6) In subsection (3) of this section the reference to any functions of the office of Governor does not include a reference to,

(a) the functions conferred upon the Governor by this section; or

(b) any functions conferred upon the Governor by any Act of the Parliament of the United Kingdom or by any Order of Her Majesty in Council or other instrument made under any such Act other than the Anguilla Act 1980.

(7) If the office of Deputy Governor is vacant or the person holding that office is acting in the office of Governor under section 31 of this Constitution or is for any other reason

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<sup>44</sup> As recommended by paragraph 30 of the 2006 Report.

<sup>45</sup> As recommended by paragraph 31 of the 2006 Report.

unable to perform the functions of the office of Deputy Governor, then such person being an Anguillian as Her Majesty may designate by instructions given through a Secretary of State shall act in the office of Deputy Governor during Her Majesty's pleasure,<sup>46</sup> subject to subsection (1).

### **Acting Governor**

**31.** (1) During any period when the office of Governor is vacant or the Governor is absent from Anguilla, or is for any other reason unable to perform the functions of the office of Governor, such person as may be designated by Her Majesty by instructions to the Governor through a Secretary of State or if no person is so designated and able to perform those functions, the Deputy Governor shall, during Her Majesty's pleasure, act in the office of Governor and shall perform the functions of that office accordingly.

(2) Before assuming the functions of the office of Governor, the person designated or, as the case may be, the Deputy Governor shall make the oaths directed by section 29(4) of this Constitution to be made by the Governor.

(3) The person designated or, as the case may be, the Deputy Governor shall not continue to act in the office of Governor after the Governor has notified him that he is about to assume or resume the functions of that office.

(4) The Governor shall not, for the purposes of this section, be regarded as absent from Anguilla or as unable to perform the functions of his office,

(a) at any time when there is a subsisting appointment of a deputy under section 33 of this Constitution; or

(b) by reason of absence from Anguilla for a period not exceeding forty-eight hours.

### **Functions of Deputy Governor<sup>47</sup>**

**32.** (1) Subject to subsection (2), the Deputy Governor shall

(a) assist the Governor in the exercise of his functions relating to matters for which the Governor is responsible under section 42;

(b) assist the Governor in the exercise of such of his other functions, being functions in the exercise of which the Governor is not obliged to act in accordance with the advice of any other person or authority, as the Governor, acting in his discretion, may direct; and

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<sup>46</sup> Amended in accordance with section 36 of the VI Constitution.

<sup>47</sup> Wording taken from section 38 of the VI Constitution.

(c) perform such other functions, not of a ministerial nature, as (subject to this Constitution and any other law) may be assigned to the Deputy Governor, at the request of the Premier, by the Governor acting in his discretion.

(2) The Deputy Governor shall be head of the public service and shall be responsible for the administration of any department of government, with respect to the terms and conditions of service of persons holding or acting in the Public Service or the Teaching Service, without prejudice to sections 84 and 85.<sup>48</sup>

### **Governor's deputy**

**33.** (1) Whenever the Governor;

(a) has occasion to be absent from Anguilla for a period which he has reason to believe will be of short duration; or

(b) is suffering from illness which he has reason to believe will be of short duration,

he may in his discretion, by writing under his hand, appoint the Deputy Governor or, in the absence of the Deputy Governor, some other suitable person who is an Anguillian to be his deputy during such absence or illness and in that capacity to perform on his behalf such of the functions of the office of Governor as may be specified in the instrument by which he is appointed.

(2) The powers and authority of the Governor shall not be abridged, altered or in any way affected by the appointment of a deputy under this section, and a deputy shall conform to and observe all instructions that the Governor, acting in his discretion, may from time to time address to him; but no court shall enquire whether or not he has complied with any such instructions.

(3) A person appointed as a deputy under this section shall hold that appointment for such period as may be specified in the writing by which he is appointed, and his appointment may be revoked at any time by Her Majesty by instructions given through a Secretary of State, or by the Governor, acting in his discretion.

## **CHAPTER 4**

### **THE EXECUTIVE**

#### **Executive authority of Anguilla<sup>49</sup>**

**34.** (1) The executive authority of Anguilla shall be vested in Her Majesty.

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<sup>48</sup> Note that this wording makes it clear that responsibility for the administration of the public service is transferred to the Deputy Governor.

<sup>49</sup> Wording taken from section 26 of Mrs Richardson's draft.

(2) Subject to the provisions of this Constitution, the executive authority of Anguilla may be exercised on behalf of Her Majesty by the Government of Anguilla, either directly or through public officers as prescribed by this Constitution or by any other law.

(3) Nothing in this section shall preclude persons or authorities other than the Government of Anguilla from exercising such functions as may be conferred upon them by any law.

### **Cabinet and government of Anguilla<sup>50</sup>**

**35.** (1) There shall be a Cabinet in and for Anguilla which shall consist of the Premier, not more than five other Ministers and two ex-officio members, namely, the Deputy Governor and Attorney-General who shall both be without vote; and such Cabinet, together with Her Majesty who is represented in Anguilla by the Governor, shall constitute the Government of Anguilla.

(2) The cabinet shall have responsibility for the formulation of policy, including directing the implementation of such policy, insofar as it relates to every aspect of government, except those matters for which the Governor has special responsibility under section 42, and the Cabinet shall be collectively responsible to the Assembly for such policies and their implementation.

(3) Subject to this Constitution, the Cabinet shall determine its own rules of procedure for the conduct of its business.

(4) Upon the coming into effect of this Constitution, the Special Advisers Act shall be repealed.<sup>51</sup>

### **Appointment of Ministers**

**36.** (1) The Governor, acting in his discretion, whether after a general election or at any time thereafter if it shall become necessary, shall appoint as the Premier the elected member of the Assembly who, in his judgment, is likely to command the support of a majority of the elected members of the Assembly.

(2) The other Ministers shall be appointed by the Governor in accordance with the advice of the Premier from among the elected members of the Assembly.

(3) The Governor acting on the advice of the Premier shall appoint one of the Ministers as Deputy Premier.

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<sup>50</sup> Wording taken from section 27 of Mrs Richardson's draft. Note the absence from Cabinet of the Governor, which is the situation in Gibraltar (section 45); and Bermuda (section 57). In Cayman Islands (section 44); the Virgin Islands (section 47); and Montserrat (section 32), where the Governor is not a member of Cabinet, the provision is that the Governor shall "so far as practicable" attend and preside at Cabinet meetings, and the Governor and Premier together decide on the Cabinet agenda.

<sup>51</sup> With the increase of the number of Ministers to 6, there will be no need any longer for members of the Assembly to be employed as ministerial assistants.

(4) The appointment of the Deputy Premier under subsection 3 may be revoked by the Governor acting on the advice of the Premier, but such revocation shall not in itself affect the Minister's tenure in office as a Minister.

(5) If occasion arises for making an appointment of any Minister between a dissolution of the Assembly and the polling in the next following general election a person who was an elected member of the Assembly immediately before the dissolution may be appointed as if he were still a member of the Assembly.

(6) Appointments made under this section shall be made by instrument under the public seal.

### **Tenure of office of ministers**

**37.** (1) If a motion on the Order Paper that the Assembly should declare a lack of confidence in the Government of Anguilla receives in the Assembly the affirmative votes of a majority of all the elected members of the Assembly, the Governor shall, by instrument under the public seal, revoke the appointment of the Premier; but before so revoking the Premier's appointment the Governor shall consult with the Premier and, if the Premier so requests, the Governor, acting in his discretion, may dissolve the Assembly instead of revoking the appointment.<sup>52</sup>

(2) The Premier shall vacate his office if, after the polling in a general election and before the Assembly first meets thereafter, the Governor, acting in his discretion, informs him that he is about to appoint another person as the Premier. No one shall be appointed as Premier for a third consecutive term.<sup>53</sup>

(3) Any Minister shall vacate his office if,

- (a) he ceases to be a member of the Assembly for any reason other than a dissolution;
- (b) he is not an elected member of the Assembly when it first meets after a general election;
- (c) the Integrity Commission determines that he has breached the Code of Conduct for Persons in Public Life for the time being in effect;<sup>54</sup>
- (d) he is required under the provisions of section 58 of this Constitution to cease to perform his functions as a member of the Assembly; or
- (e) he resigns it by writing under his hand addressed to the Governor.

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<sup>52</sup> As recommended by paragraphs 45 and 46 of the 2006 Report. Taken from section 53(1) of the VI Constitution.

<sup>53</sup> It is the overwhelming preference of the public during the October 2016 consultations that the Premier should be limited in any future Constitution to a maximum of two consecutive terms.

<sup>54</sup> As recommended by paragraph 72 of the 2006 Report. Wording taken from section 34 of the TCI Constitution.

- (4) A Minister other than the Premier shall also vacate his office if,
- (a) the Premier vacates his office; or
  - (b) his appointment is revoked by the Governor acting in accordance with the advice of the Premier, by instrument under the public seal.
- (5) The Speaker shall give priority to any motion proposing a lack of confidence in the government which is lodged with him and any such motion shall be dealt with promptly and in any event within one month.

#### **Performance of functions of Premier in certain events<sup>55</sup>**

**38.** (1) If the Premier is expected to be absent from Anguilla for more than forty-eight hours, the Governor shall authorise the Deputy Premier to perform the functions of the office of Premier to perform the functions of Premier; and the Governor shall revoke this authority on the return to Anguilla of the Premier.

(2) If both the Premier and the Deputy Premier are expected to be absent from Anguilla for more than forty-eight hours, the Governor shall authorise another Minister designated by the Premier to perform the functions of the office of Premier; and the Governor shall revoke this authority on the return to Anguilla of either the Premier or the Deputy Premier.

(3) If the Cabinet advises that the Premier is unable to perform his functions by reason of illness, the Governor shall authorise the Deputy Premier to perform the functions of the office of Premier; and the Governor shall revoke this authority if the Cabinet advises him that the Premier is again able to perform his functions.

(4) If the Cabinet advises the Governor that both the Premier and the Deputy Premier are unable to perform their functions by reason of absence or illness, the Governor shall authorise another Minister designated by the Premier (or, if the Premier makes no such designation, appointed by the Governor on the advice of Cabinet, and where the Cabinet fails to give such advice within twenty-four hours of the Governor seeking such advice, selected by the Governor in his discretion) to perform the functions of the office of Premier; and the Governor shall revoke this authority if the Cabinet advises him that the Premier or the Deputy Premier is again able to perform his functions.

(5) Any authority given or revoked by the Governor under this section shall be in writing.

#### **Assignment of responsibilities and Ministers**

**39.** The Governor, acting in accordance with the advice of the Premier, shall, by directions in writing, assign to any Minister responsibility for the conduct (subject to the provisions of this Constitution and of any other law) of any business of the Government

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<sup>55</sup> This section dealing with the Deputy Premier is taken from section 55 of the VI Constitution.

of Anguilla including responsibility for the administration of any department of government and shall likewise remove or amend any such assignment.

#### **Attorney-General<sup>56</sup>**

**40.** (1) There shall be an Attorney-General of Anguilla appointed<sup>57</sup> by the Governor after consultation with the Premier and Leader of the Opposition, whose office shall be a public office and who shall be appointed in accordance with section 96 of this Constitution.

(2) The Attorney-General shall be the principal legal adviser to the Government of Anguilla.

#### **Director of Public Prosecutions<sup>58</sup>**

**41.** (1) There shall be a Director of Public Prosecutions, whose office shall be a public office and who shall be appointed in accordance with section 96 of this Constitution.

(2) The Director of Public Prosecutions shall have power, in any case in which he deems it desirable to do so,

- (a) to institute and undertake criminal proceedings against any person before any civil court in respect of any offence against any law in force in Anguilla;
- (b) to take over and continue any such criminal proceedings that have been instituted by any other person or authority; and
- (c) to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by himself or any other person or authority.

(3) The powers of the Director of Public Prosecutions under subsection (2) may be exercised by him in person or by officers subordinate to him acting under and in accordance with his general or special instructions.

(4) The powers conferred on the Director of Public Prosecutions by subsection (2)(b) and (c) shall be vested in him to the exclusion of any other person or authority; but where any other person or authority has instituted criminal proceedings, nothing in this subsection shall prevent the withdrawal of those proceedings by or at the instance of that person or authority at any stage before the person against whom the proceedings have been brought has been charged before the court.

(5) For the purposes of this section, any appeal from any determination in any criminal proceedings before any court, or any case stated or question of law reserved for the

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<sup>56</sup> As recommended by paragraph 70 of the 2006 Report. Wording taken from section 58 of the VI Constitution.

<sup>57</sup> Note that section 96(6) requires that preference should be given to Anguillians.

<sup>58</sup> As recommended by paragraph 71 of the 2006 Report. Wording taken from section 59 of the VI Constitution.



purpose of any such proceedings, to any other court or to Her Majesty in Council shall be deemed to be part of those proceedings.

(6) In the exercise of the powers conferred on him by this section and section 57(2) of this Constitution the Director of Public Prosecutions shall not be subject to the direction or control of any other person or authority.

### **Governor's special responsibilities<sup>59</sup>**

**42.** (1) The Governor shall be responsible for the conduct (subject to this Constitution and any other law) of any business of the Government of Anguilla, including the administration of any department of government, with respect to the following matters,

- (a) external affairs, subject to subsection (4);
- (b) defence, including the armed forces;
- (c) internal security, including the Police Service, without prejudice to section 90;
- (d) the administration of the courts;

and the Governor shall keep the Premier fully informed concerning the general conduct of these matters, and the Premier may request information in respect of any particular matter.

(2) The Governor, acting after consultation with the Premier, shall assign to any member of the Cabinet responsibility for the conduct, on behalf of the Government of Anguilla any business in the Assembly with respect to any of the matters mentioned in subsection (1).

(3) The Governor, acting in his discretion, may, by directions in writing, delegate, with the prior approval of a Secretary of State, to the Premier or any other Minister designated by the Governor on the advice of the Premier such responsibility for matters of external affairs or internal security as the Governor may think fit upon such terms and conditions as he may impose.

(4) Notwithstanding subsection (3), the Governor shall, by directions in writing, delegate to the Premier or to any other Minister designated by the Governor on the advice of the Premier, on the terms and conditions set out in subsection (5), responsibility for the conduct of external affairs as they relate to any matters that fall under the portfolios of Ministers, including,

- (a) the Caribbean Community, the Organisation of Eastern Caribbean States, the Association of Caribbean States, the United Nations Economic Commission for Latin America and the Caribbean, or any other Caribbean regional organisation or institution;

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<sup>59</sup> Wording taken from section 60 of the VI Constitution, save that paragraph (1)(d) is transferred to the Deputy Governor at section 32(3).

- (b) other Caribbean regional affairs relating specifically to issues that are of interest to or affect Anguilla;
- (c) the relationship between Anguilla and St Maarten, St Martin,<sup>60</sup> and the United States Virgin Islands in matters of mutual interest;
- (d) tourism and tourism-related matters;
- (e) taxation and the regulation of finance and financial services; and
- (f) European Union matters directly affecting the interests of Anguilla.

(5) The terms and conditions referred to in subsection (4) are the following,

- (a) separate authority shall be required from or on behalf of a Secretary of State for the commencement of formal negotiation and the conclusion of any treaty or other international agreement by the Government of Anguilla, provided that general authority may be granted in specified matters to commence the formal negotiation of, and where it is deemed appropriate, to conclude any such treaty or international agreement;
- (b) no political declaration, understanding or arrangement in the field of foreign policy shall be signed or supported in the name of the Government of Anguilla without the prior approval of a Secretary of State;
- (c) a formal invitation to a member of government or Head of State of another country to visit Anguilla shall not be issued without prior consultation with the Governor;
- (d) the costs of any activities in pursuance of subsection (4) shall be borne by the Government of Anguilla;
- (e) the Premier or other Ministers shall keep the Governor fully informed of any activities in pursuance of subsection (4); and
- (f) the Premier or other Minister shall provide to the Governor on request all papers and information, including the text of any instrument under negotiation, available to the Premier or other Minister with respect to any activities in pursuance of subsection (4).

(6) Any matter that is delegated to the Premier or to any other Minister under subsection (4) shall be performed by the Premier or such other Minister in a manner that is in the best interests of Anguilla and not prejudicial to the interests of Her Majesty and, for this purpose, the Governor and the Premier shall from time to time hold conference to ensure the proper safeguard of those interests.

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<sup>60</sup> Note that St Maarten and St Martin are added to the provision in the VI Constitution.

(7) In the event of any disagreement regarding the exercise of any delegated authority under subsection (4), the matter shall be referred to a Secretary of State whose decision on the matter shall be final and whose directions shall be complied with.

(8) Where the Governor, acting in his discretion, determines that the exercise of any function conferred on any other person or authority (other than the Assembly) would involve or affect any matter mentioned in subsection (1), the Governor may, acting after consultation with the Premier, give directions as to the exercise of that function, and the person or authority concerned shall exercise the function in accordance with those directions.<sup>61</sup>

(9) The Governor shall consult with Cabinet or with the Premier as appropriate in the formulation of policy and in the exercise of all powers conferred upon him by this section of the Constitution.

### **Oaths to be taken by members of Cabinet**

**43.** Every member of the Cabinet shall, before entering upon the duties of his office as a member, make before the Governor an oath of allegiance in the form set out in the Schedule to this Constitution and an oath for the due execution of that office in such form as may be prescribed by any law in force in Anguilla or, if no law in that behalf is for the time being in force, in the form set out in the Schedule to this Constitution.

### **Summoning of persons to Cabinet**

**44.** The Premier may summon any public officer to a meeting of the Cabinet whenever the business before the Cabinet renders the presence of that officer desirable.<sup>62</sup>

### **Summoning of Cabinet and transaction of business**

**45.** (1) The Cabinet shall not be summoned except by the authority of the Premier, acting in his discretion:<sup>63</sup>

Provided that the Premier shall summon the Cabinet if not less than two elected members of the Cabinet so request in writing.

(2) No business shall be transacted at any meeting of the Cabinet unless there are four Ministers present including the person in the chair.<sup>64</sup>

(3) Subject to the provisions of the last foregoing subsection, the Cabinet shall not be disqualified for the transaction of business by reason of any vacancy in the membership of the Cabinet (including any vacancy not filled when the Cabinet is first constituted or is reconstituted at any time) and the validity of the transaction of business in the Cabinet

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<sup>61</sup> Subsections (1) to (8) are taken from section 60 of the VI Constitution.

<sup>62</sup> As recommended by paragraph 66 of the 2006 Report.

<sup>63</sup> As recommended by paragraph 67 of the 2006 Report.

<sup>64</sup> As recommended by paragraph 68 of the 2006 Report.

shall not be affected by reason only of the fact that some person who was not entitled to do so took part therein.

### **Presiding in Cabinet**

**46.** (1) The Premier shall, so far as is practicable, attend and preside at meetings of the Cabinet.<sup>65</sup>

(2) In the absence of the Premier the Deputy Premier shall preside.

### **Cabinet Secretary<sup>66</sup>**

**47.** (1) There shall be a Cabinet Secretary who shall be an Anguillian, whose office shall be a public office and who shall be appointed in accordance with section 78, provided that if at any time he cannot conveniently discharge the functions of Cabinet Secretary those functions shall be discharged by such public officer as may be designated in that behalf by the Governor after consultation with the Premier.

(2) The Cabinet Secretary shall attend meetings of the Cabinet and be responsible for keeping the minutes of the meetings of the Cabinet and for conveying the conclusions reached at the meetings to the appropriate person or authority; and he shall have such other functions as the Governor, acting in consultation with the Premier, may from time to time direct.

(3) The Cabinet Secretary shall,

- (a) transmit copies of all papers submitted for consideration by the Cabinet to its members;
- (b) inform all its members of the summoning of any meeting of the Cabinet and of the matters to be discussed at any such meeting; and
- (c) furnish all its members, as soon as practicable after each meeting of the Cabinet, with a copy of the confirmed minutes of the previous meeting showing the matters discussed and the conclusions reached at the meeting.

(4) The Cabinet Secretary shall also have general responsibility, under the authority of the Premier, for the coordination of Government business.

(5) In exercising his functions under subsection (3)(a) and (b) the Cabinet Secretary shall comply with any instructions given to him by the Premier.

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<sup>65</sup> As recommended by paragraph 69 of the 2006 Report.

<sup>66</sup> Wording taken with amendment from section 37 of the TCI Constitution. During the public consultations in October 2016, it was pointed out that each Premier will probably want his or her own appointee as Cabinet Secretary upon whom he or she can depend and whom he or she can trust. While the point is a good one, it is not thought by the Committee that it is appropriate to deal with the question of contracts for such an officer in the Constitution.

(6) The functions conferred on the Cabinet Secretary by this section may be exercised by the Cabinet Secretary in person or by officers subordinate to him acting under and in accordance with his general or special instructions.

### **Public Seal<sup>67</sup>**

**48.** The Governor shall keep and use the public seal for sealing all things that should pass that seal.

## **CHAPTER 5 THE PUBLIC SERVICE**

### **Public service general**

#### **Power to appoint, etc., to public offices<sup>68</sup>**

**49.** (1) Power to make appointments to public offices and to remove and to exercise disciplinary control over persons holding or acting in such offices shall vest in,

(a) the Governor after consultation with the Premier and the Leader of the Opposition, in relation to the offices of Deputy Governor and Chief Auditor; and

(b) the Deputy Governor,<sup>69</sup>

(i) acting in accordance with the advice of the Teaching Service Commission in relation to the teaching service; and

(ii) in relation to all other offices in accordance with the advice of the Public Service Commission; and

(iii) acting in accordance with the advice of any Service Commission appointed pursuant to section 103(1)(h) of this Constitution;

but the Deputy Governor, acting in his discretion, may act otherwise than in accordance with the advice pursuant to paragraphs (b) (i), (ii) and (iii) if he determines that compliance with that advice would prejudice Her Majesty's service,<sup>70</sup> provided that a reasoned statement is given.

(2) Before exercising the powers vested in the Deputy Governor by subsection (1), the Deputy Governor may, acting in his discretion, once refer the advice of the Teaching

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<sup>67</sup> Removed from the previous "Miscellaneous" Chapter.

<sup>68</sup> Wording taken with amendment from section 92 of the VI Constitution, amended to reflect the division of responsibilities for appointment to the public service, the police service, and the teaching service, between the Governor and the Deputy Governor as recommended by paragraphs 147-152 of the 2006 Report.

<sup>69</sup> As recommended by paragraphs 151 and 165 of the 2006 Report.

<sup>70</sup> The question has been asked if the meaning of the phrase "Her Majesty's service" is clear. Can it be further clarified?

Service Commission, the Police Service Commission or the Public Service Commission along with a reasoned statement for reconsideration by it.

(3) If the Teaching Service Commission, the Police Service Commission, the Public Service Commission, or any Service Commission appointed pursuant to section 103(1)(h), having reconsidered its original advice under subsection (2), substitutes for it different advice, subsection (2) shall apply to that different advice as it applies to the original advice.

(4) Before appointing any person to the office of head of department or any more senior office the Deputy Governor shall in addition consult the Premier.

(5) Subject to subsection (7) power to make appointments to the office of Cabinet Secretary is vested in the Governor, acting in accordance with the advice of the Premier; but the Governor, acting in his discretion, may decline to act in accordance with that advice if he determines that compliance with that advice would prejudice Her Majesty's service.

(6) Where the Governor declines to act in accordance with the advice of the Premier under subsection (5), he shall refer the matter to the Premier requesting advice on the appointment, pursuant to subsection (7), of another person to the office of Cabinet Secretary and the Governor shall act in accordance with that advice.

(7) Whenever occasion arises for making an appointment under subsection (5) the Public Service Commission shall submit to the Premier a list of persons who appear to the Commission to be qualified and competent for the appointment and the Premier shall advise the Governor to appoint a person whose name appears on the list, provided the Premier may request once an additional list of persons from the Public Service Commission from which to advise an appointment.

(8) The Deputy Governor, acting after consultation with the Teaching Service Commission, the Police Service Commission, or the Public Service Commission, may, by regulations published in the Gazette, delegate to any member of the Commission or any public officer or class of public officer, to such extent and subject to such conditions as may be prescribed in the regulations, any of the powers vested in the Deputy Governor to make appointments to public offices and to remove or exercise disciplinary control over persons holding or acting in such offices; and except in so far as regulations made under this subsection otherwise provide, any power delegated by such regulations may be exercised by any person to whom it is delegated without reference to the Teaching Service Commission, the Police Service Commission or the Public Service Commission.

(9) The Premier may from time to time request a report from the Teaching Service Commission, the Police Service Commission, or the Public Service Commission about the functioning of the teaching service, the police service, or the public service.

(10) This section does not apply to any office to which section 96 of this Constitution applies.<sup>71</sup>

(11) In the event a Service Commission is appointed pursuant to section 103(1)(h) of this Constitution, the provisions of this section shall apply equally to such Commission.

### **Pensions: Applicability of pensions law**

**50.** (1) The law to be applied with respect to any pension benefits that were granted to any officer in respect of the service of that officer in a public office, before the commencement of this Constitution, shall be the law that was in force at the date on which those benefits were granted or any law in force at a later date that is not less favourable to that person.

(2) The law to be applied with respect to any pension benefits (not being benefits to which subsection (1) of this section applies) shall –

(a) in so far as those benefits are wholly in respect of a period of service as a public officer that commenced before the commencement of this Constitution; and

(b) in so far as those benefits are wholly or partly in respect of a period of service as a public officer that commenced after the commencement of this Constitution, be the law in force on the date on which the period of service commenced,

or any law in force at a later date that is not less favourable to that person.

(3) Where a person is entitled to exercise an option as to which of two or more laws shall apply in his case, the law for which he opts shall, for the purposes of this section, be deemed to be more favourable to him than the other law or laws.

(4) In this section “pension benefits” means any pensions, compensation, gratuities or other like allowances for persons in respect of their service as public officers or for the widows, children, dependents or personal representatives of such persons in respect of such service.

### **Pensions, etc., charged on revenues of Anguilla**

**51.** All pension benefits shall (except to the extent that they are by law charged upon and duly paid out of some other fund) be a charge on the Consolidated Fund.

### **Grant and withholding of pensions, etc.**

**52.** (1) The power to grant any award under any pensions law in force in Anguilla (other than an award to which, under that law, the person to whom it is payable is entitled as of right), and, in accordance with any provisions in that behalf contained in any such law,

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<sup>71</sup> Additional subsections (2) to (10) taken with amendment from section 92 of the VI Constitution.

to withhold, reduce in amount or suspend any award payable under any such law is hereby vested in the Governor acting in his discretion.

(2) In this section “pension law” means any law relating to the grant to any person, or to the widow, children, dependents or personal representatives of that person, of an award in respect of the services of that person in a public office, and includes any instrument made under any such law.

## CHAPTER 6

### HOUSE OF ASSEMBLY

#### **Composition of legislature and power to make laws<sup>72</sup>**

**53.** (1) There shall be a Legislature of Anguilla which shall consist of Her Majesty and a House of Assembly.

(2) Subject to this Constitution, the Assembly may make laws for the peace, order and good government of Anguilla.

(3) The Assembly shall consist of a Speaker elected as provided in section 69 of this Constitution, not less than thirteen elected members, and two non-voting *ex officio* members, namely the Attorney-General and the Deputy Governor.

(4) A law made under section 66 may alter the number of elected members of the Assembly, provided that the number of elected members shall be not less than thirteen; but no such law shall come into force,

(a) unless, where the law provides for an alteration in the number of electoral districts referred to in section 66 of this Constitution, a Bill providing for the altered number of electoral districts and their boundaries to take account of the altered number of elected members has been passed following a report by an electoral district boundaries commission; and

(b) until the dissolution of the Assembly next following the enactment of such law.

(5) For its enactment a Bill for a law made in pursuance of subsection (2) of this section shall require the support of two-thirds of the elected members of the Assembly.

(6) A law made in pursuance of subsection (4) of this section shall provide for the quorum in the Assembly and the Cabinet.

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<sup>72</sup> Adapted from section 63 of the VI Constitution. This version more clearly establishes that the House consists of 9 district representatives and 4 representatives elected at large.



### **Qualifications for elected membership<sup>73</sup>**

**54.** Subject to the provisions of the next following section, a person shall be qualified to be elected as a member of the Assembly if, and shall not be qualified to be so elected unless, he is an Anguillian, is twenty-one years or upwards who is registered as a voter in an electoral district in Anguilla, and either,

- (a) was born in Anguilla and is domiciled there at the date of his nomination for election and has resided in Anguilla for a period of not less than three years immediately before the date of his nomination for election; or
- (b) has resided in Anguilla for a period of not less than three years immediately before the date of his nomination for election and is domiciled there at that date and is the son or daughter of parents at least one of whom was born in Anguilla.

### **Disqualifications for elected membership<sup>74</sup>**

**55. (1)** No person shall be qualified to be elected as a member of the Assembly who,

- (a) holds or is acting in any office of emolument in the service of the Crown;
- (b) is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law in force in any country;
- (c) is a person certified to be insane or otherwise adjudged to be of unsound mind under any law in force in Anguilla;
- (d) has been convicted by any court of law in any country of an offence of dishonesty or immorality;<sup>75</sup>
- (e) is a party to, or a partner in a firm or a director or manager of a company which is a party to, any contract with the Government and has not, by that date, disclosed in a notice to the Integrity Commission the nature of such contract and his interest, or the interest of such firm or company, in it;<sup>76</sup> or
- (f) is disqualified for membership of the Assembly by any law in force in Anguilla relating to offences connected with elections.

(2) Paragraph (c) of subsection (1) of this section shall not be construed as precluding a member of the Assembly from receiving emoluments in respect of his services as such a member.

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<sup>73</sup> Retains the present qualifications of section 36 as recommended by paragraphs 82, 83 and 84 of the 2006 Report.

<sup>74</sup> Amended from the present provision of the 1982 Constitution in accordance with the recommendations at paragraphs 86-90 of the 2006 Report, to remove the disqualifications for ministers of religion, and persons with dual citizenship.

<sup>75</sup> As recommended by paragraph 90 of the 2006 Report.

<sup>76</sup> Wording taken from section 49(f) of the TCI Constitution.

## **Declaration by candidates for election to Assembly<sup>77</sup>**

**56.** (1) Each candidate for election to the Assembly shall, on the date of his nomination for election, make a written declaration to the Supervisor of Elections that he is qualified for election under section 54 and that no disqualification mentioned in section 55 of this Constitution applies to him.

(2) The Supervisor of Elections shall publish any declaration made to him under subsection (1) by the close of the next following working day.

(3) Within five days of the publication of any such declaration, a challenge to the veracity of that declaration may be brought by any registered voter or by the Attorney-General before the High Court; the High Court shall hear and determine the matter as expeditiously as possible, and its decision shall be final and not subject to any appeal.

## **Tenure of office of members of Assembly**

**57.** The seat of an elected member of the Assembly shall become vacant,

- (a) upon a dissolution of the Assembly;
- (b) if, without prior notice to the Speaker,<sup>78</sup> he is absent from three consecutive meetings of the Assembly;
- (c) if he ceases to be resident in Anguilla;
- (d) if he resigns his/her seat by writing under his hand addressed to the Governor;
- (e) if any of the circumstances arise that, if he were not a member of the Assembly, would cause him to be disqualified for election thereto by virtue of any of paragraphs (a), (b), (c), (d), (e), or (f) of section 55 of this Constitution;
- (f) in the event of the receipt by the Speaker of any recall petition presented to him in accordance with the provisions of any Act regulating the recall procedure and signed to the satisfaction of the Speaker by at least two-thirds of the number of persons voting at the last election for that district;<sup>79</sup>

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<sup>77</sup> Wording taken from section 50 of the TCI Constitution.

<sup>78</sup> The previous provision for the Governor to receive notice dates back to the period when the Commissioner/Governor chaired meetings of the Assembly.

<sup>79</sup> Since 2015, and resulting from the “Expenses Scandal” there has been in the UK a power for voters to recall an MP. There appears to be a strong feeling in Anguilla that there ought to be a power of recall by the voters if a member of the Assembly loses the confidence of his or her electorate. One suggestion is that if a petition is sent to the Speaker signed by two-thirds of the number of registered voters that voted in the election, the Speaker should be required to declare the seat vacant and request the Governor to issue a writ of by-election for that district. A district may be one of nine into which the island is divided, or may be one of the proposed 4 at large seats. Any recall process would have to be governed by an Act which sets out the procedure to be followed. For the Constitution a simple enabling provision would be sufficient to allow such an Act to be passed in due course.

(g) if he fails to file his declaration of interests as required by section 98 of this Constitution; or

(h) in the circumstances specified in the next following section.

### **Vacation of seat on sentence**

**58.** (1) Subject to the provisions of this section, if an elected Member is convicted by a court of law in any country of an offence of dishonesty or immorality, he shall forthwith cease to perform his functions as a member of the Assembly, and his seat in the Assembly shall become vacant at the expiration of a period of thirty days thereafter;<sup>80</sup>

Provided that the Speaker may, at the request of the member, from time to time extend that period for thirty days to enable the member to pursue any appeal in respect of his conviction or sentence, so however that extensions of time exceeding in the aggregate three hundred and thirty days shall not be given without the approval of the Assembly signified by resolution.

(2) If at any time before the member vacates his seat he is granted a free pardon or his conviction is set aside or his sentence is reduced to a term of imprisonment of less than twelve months or a punishment other than imprisonment is substituted, his seat in the Assembly shall not become vacant under the provisions of the last foregoing subsection and he may again perform his functions as a member of the Assembly.

(3) If at any time a member of the Assembly is charged with an offence of dishonesty or immorality he shall be suspended from the Assembly until such time as he is either acquitted or convicted.

### **Temporary members of Assembly**

**59.** (1) Whenever an ex-officio member of the Assembly is by reason of his illness or absence from Anguilla or for any other reason incapable of performing the functions of his office, the Governor acting in his discretion may, by instrument under the public seal, appoint any public officer to be temporarily a member of the Assembly in his place.

(2) A person appointed under this section to be temporarily a member of the Assembly,

(a) shall hold his seat in the Assembly during Her Majesty's pleasure; and

(b) shall vacate his seat when he is informed by the Governor that the member on account of whose incapacity he was appointed is again able to perform his functions as a member of the Assembly.

(3) Subject to the provisions of this section the provisions of this Constitution shall apply to a person appointed to be temporarily a member of the Assembly as they apply to the member on account of whose incapacity he was appointed.

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<sup>80</sup> Conviction of an offence of dishonesty or immorality replaces conviction and sentence for a term exceeding 12 months as recommended by paragraph 92 of the 2006 Recommendations.

## **Leader of the Opposition<sup>81</sup>**

**60.** (1) Subject to the provisions of this section, the Governor may appoint a Leader of the Opposition.

(2) The Governor shall appoint as Leader of the Opposition,

- (a) the member of the Assembly who in the judgment of the Governor, is the leader of any opposition party whose numerical strength in the Assembly is greater than that of any other opposition party; or
- (b) if there is no such party, the member of the Assembly who in the judgment of the Governor is best able to command the support of the members of the Assembly in opposition to the Government; or
- (c) if there is no person who in the opinion of the Governor is able to command the support of the members of the Assembly in opposition to the Government, then the member in opposition to government who has the longest period of past service in the Assembly.

(3) If at any time between polling in a general election and the next following dissolution of the Assembly the Governor is satisfied that, if the office of the Leader of the Opposition were then vacant, he would appoint thereto a person other than the person then holding that office, the Governor shall revoke the appointment of the Leader of the Opposition.

(4) The office of the Leader of the Opposition shall also become vacant,

- (a) if for any reason other than a dissolution of the Assembly the holder thereof ceases to be a member of the Assembly, or
- (b) if the holder thereof is appointed to the Cabinet.

(5) In this section, “opposition party” means a group of members of the Assembly in opposition to the Government who are prepared to support one of their number as their leader.

(6) In the exercise of his functions under this section the Governor shall act in his discretion.

## **Power to provide for a referendum<sup>82</sup>**

**61.** (1) A law enacted by the Assembly may make provision to hold a referendum amongst persons registered as voters in accordance with section 65 of this Constitution, on a matter or matters of national importance, when so resolved by the majority of the

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<sup>81</sup> The present provision in section 40A of the 1982 Constitution, amended in accordance with the recommendation at paragraph 94 of the 2006 Report.

<sup>82</sup> Wording taken from section 69 of the Cayman Islands Constitution.

elected members of the Assembly; but the question of whether Anguilla should seek any amendment to this Constitution that may result in its independence shall be deemed to be a matter of national importance, and shall require a two-thirds majority of those voting.

(2) Subject to this Constitution, a referendum under this section shall be binding on the Government and the Assembly if assented to by more than 50 per cent of persons voting.

### **People-initiated referendums<sup>83</sup>**

**62.** (1) Without prejudice to section 76 of this Constitution, a law enacted by the Assembly shall make provision to hold a referendum amongst persons registered as voters in accordance with section 65 of this Constitution on a matter or matters of national importance that do not contravene any part of the fundamental rights provisions or any other part of this Constitution.

(2) Before a referendum under this section may be held,

- (a) there shall be presented to the Cabinet a petition signed by not less than 33 per cent of persons registered as voters in accordance with section 65 of this Constitution;
- (b) the Cabinet shall settle the wording of a referendum question or questions within a reasonable time period as prescribed by law; and
- (c) the Cabinet shall make a determination on the date the referendum shall be held in a manner prescribed by law.

(3) Subject to this Constitution, a referendum under this section shall be binding on the Government and the Assembly if assented to by more than 50 per cent of persons voting.

### **Determination of questions as to membership of Assembly**

**63.** (1) Any question whether a person has been validly appointed as a temporary member of the Assembly, or whether a temporary member of the Assembly has vacated his seat therein,<sup>84</sup> shall be determined by the Governor acting in his discretion.

(2) Any question whether a person has been validly elected as a member of the Assembly, or whether an elected member of the Assembly has vacated his seat therein, shall be determined by the High Court, whose decision shall be final and not subject to any appeal.

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<sup>83</sup> Wording taken from section 70 of the Cayman Islands Constitution.

<sup>84</sup> The words “or is required by virtue of section 58 of this Constitution to cease to perform his functions as a member” are deleted as being in conflict with subsection (2), where the provision more appropriately belongs.

- (3) (a) An application to the High Court for the determination of any question whether a person has been validly elected as a member of the Assembly may be made by,
- (i) a person who voted or had the right to vote at the election to which the application relates;
  - (ii) a person claiming to have had the right to be returned at such election;
  - (iii) a person alleging himself to have been a candidate at such election; or
  - (iv) the Attorney-General.
- (b) An application to the High Court for the determination of any question whether an elected member of the Assembly has vacated his seat therein or is required by virtue of section 58 of this Constitution to cease to perform his functions as a member may be made by,
- (i) any elected member of the Assembly; or
  - (ii) the Attorney-General.
- (c) If any application referred to in paragraph (a) or (b) of this subsection is made by a person other than the Attorney-General, the Attorney-General may intervene and may then appear or be represented in the proceedings.

**Penalty for sitting or voting in Assembly when unqualified<sup>85</sup>**

**64.** (1) Any person who sits or votes in the Assembly after it has been held by the High Court that he is not entitled to do so shall be liable to a penalty established from time to time by a law.

(2) Any such penalty shall be recoverable by civil action in the High Court at the suit of the Attorney-General.

**Qualification of voters**

**65.** (1) A person shall be qualified to be registered as a voter for the purpose of elections if he is of the age of eighteen years and upwards and,

- (a) is an Anguillian;<sup>86</sup> and
- (b) has been ordinarily resident<sup>87</sup> in Anguilla for a period of not less than three years immediately before the qualifying date.

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<sup>85</sup> As recommended by paragraphs 97-100 of the 2006 Report.

<sup>86</sup> As recommended by paragraphs 102-103 of the 2006 Report.

<sup>87</sup> As recommended by paragraph 104 of the 2006 Report.

- (2) No person shall be qualified to be registered as a voter who,
- (a) is under sentence of death imposed on him by a court of law in any country or is under a sentence of imprisonment (by whatever name called) exceeding twelve months imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court, provided that the acts constituting the offence for which such sentence was imposed would, if committed in Anguilla, have constituted an offence under the law of Anguilla;
  - (b) is a person certified to be insane or otherwise adjudged to be of unsound mind under any law in force in Anguilla; or
  - (c) is disqualified for registration as a voter by any law in force in Anguilla relating to offences connected with elections.
- (3) For the purposes of paragraph (a) of the preceding subsection,
- (a) two or more terms of imprisonment that are required to be served consecutively shall be regarded as a single term of imprisonment for the aggregate period of those terms; and
  - (b) no account shall be taken of a sentence of imprisonment imposed as an alternative to, or in default of the payment of, a fine.
- (4) Within six months after the coming into effect of this Constitution, and at such times thereafter as the Governor may by Proclamation direct,<sup>88</sup> a new List of Voters qualified under this Constitution shall be prepared by an enumeration process to be provided for in a law governing the registration of voters and thereupon the existing List of Voters shall become void. Thereafter, the List of Voters shall be constantly updated by a process of continuous registration of qualified new voters.<sup>89</sup>

### **Laws as to elections**

**66.** Subject to the provisions of this Constitution, the Assembly may provide<sup>90</sup> for the election of members of the Assembly, including (without prejudice to the generality of the foregoing power) the following matters, that is to say,

- (a) the qualifications and disqualifications of voters;

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<sup>88</sup> It is intended that no person should be entitled to remain permanently on the List of Voters, as presently obtains, no matter how long he has ceased to reside in Anguilla. The intention is that the new Elections Act should provide that periodically, eg, after every ten-year census, there should be a new enumeration process.

<sup>89</sup> This provision is designed to authorise preparation of a new List of Voters who are qualified under the new test of “ordinary residence” in Anguilla.

<sup>90</sup> The present law is the Elections Act RSA c E030 as amended. The regulations are the Elections Registration Regulations and the House of Assembly Elections Regulations. These will need to be replaced or amended. In particular, in accordance with the recommendation at paragraph 76 of the 2006 Report, the Elections Act should provide for 9 members to represent constituencies and 4 to be elected at-large

- (b) the registration of voters;
- (c) the ascertainment of the qualification of voters and of candidates for election;
- (d) the holding of elections generally, including a fixed date for the holding of general elections;<sup>91</sup>
- (e) the determination of any question whether any person has been validly elected a member of the Assembly or whether the seat of any elected member in the Assembly has become vacant;
- (f) the definition and trial of offences connected with elections and the imposition of penalties therefor, including the disqualification for membership of the Assembly, or for registration as a voter or for voting at elections, of any person concerned in any such offence;
- (g) the disqualification for election as members of the Assembly of persons holding or acting in any office the functions of which involve any responsibility for, or in connection with, the conduct of any election or the compilation or revision of any electoral register; and
- (h) the regulation of campaign funding.<sup>92</sup>

### **Elected members**<sup>93</sup>

**67.** (1) The elected members of the Assembly shall be persons qualified for election in accordance with this Constitution.

- (2) Subject to section 53(3) of this Constitution, for the purposes of elections, Anguilla,
- (a) shall be a single electoral district and shall return not less than four members to the Assembly; and
  - (b) shall also be divided into not less than nine electoral districts in such manner as may be provided by or under any law for the time being in force in Anguilla, and each such district shall return one member to the Assembly.

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<sup>91</sup> During the October 2016 public consultations, there was widespread agreement on the need for the new Constitution to provide for a fixed date for general elections.

<sup>92</sup> As recommended by paragraph 80 of the 2006 Report.

<sup>93</sup> Taken and adapted from section 64 of the VI Constitution. As with the BVI, it is proposed that Anguilla be divided into at least 9 districts and there also be at least 4 members at large. Once the new draft Elections Act is passed into law the Governor should proceed to appoint the Electoral Boundaries Commission to carry out its work prior to the adoption of this new Constitution which will then give a constitutional guarantee for this process.



## CHAPTER 7

### POWERS AND PROCEDURE IN THE HOUSE OF ASSEMBLY<sup>94</sup>

#### Standing Orders and committees

**68.** (1) Subject to this Constitution, the Assembly may from time to time make, amend and revoke Standing Orders for the regulation and orderly conduct of its own proceedings and the dispatch of business, and for the passing, intituling and numbering of Bills and for their presentation to the Governor for assent.<sup>95</sup>

(2) Standing Orders must provide for fair procedures, adequate notice of Bills and motions, and a sufficient opportunity for members of the Assembly (including opposition members) to speak and otherwise participate in the proceedings of the Assembly.

(3) Standing Orders shall not be suspended or revoked without good reason.

(4) In any matter not provided for in Standing Orders, resort shall be had to the usage and practice of the House of Commons of the United Kingdom, which shall be followed as far as the same may be applicable to the Assembly and not inconsistent with Standing Orders nor with the practice of the Assembly.

(5) In cases of doubt, Standing Orders shall be interpreted in the light of the relevant usage and practice of the House of Commons, but no restriction which the House of Commons has introduced by standing order after the making of such Standing Orders shall be deemed to extend to the Assembly or its members until the Assembly has by Standing Orders provided for such restriction.

(6) Standing Orders shall make provision for the establishment of a Finance Committee of the Assembly to consider in detail the estimates of revenue and expenditure of Anguilla laid before the Assembly by the Minister responsible for finance, and to examine and consider all financial Bills and such other matters relating to the finances of Anguilla as may from time to time be referred to it by the Assembly and to report on them to the Assembly.

(7) The Finance Committee shall consist of all the elected members of the Assembly and shall be chaired by the Minister responsible for finance.

(8) Standing Orders may also establish one or more other standing committees of the Assembly, each of which may be charged with responsibility for monitoring the conduct

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<sup>94</sup> This Chapter in the 1982 Constitution commenced with section 47 which provided that the power to make laws for Anguilla vested in the Governor acting “with the advice and consent” of the Assembly. This provision is no longer repeated as being inappropriate in this day, and is replaced by new section 53 which provides that the Legislature for Anguilla consists of Her Majesty and a House of Assembly.

<sup>95</sup> The previous provision for the Governor to approve Standing Orders is deleted, since, as the Governor no longer presides as Speaker of the Assembly, it is not appropriate for the Governor to have a say in the Standing Orders of a House of Assembly.

of business of the Government for which responsibility has been assigned to a Minister under section 39 of this Constitution.

### **Presiding in Assembly**

**69.** (1) When the Assembly first meets after a general election, or after the office of Speaker has fallen vacant for any reason other than a dissolution of the Assembly, and before it proceeds to the dispatch of any other business, the Assembly shall elect a person to be Speaker of the Assembly.

(2) The Speaker shall be elected from among persons who are qualified for election to the Assembly but who are not members of the Cabinet.

(3) When the Assembly first meets after a general election and before it proceeds to the dispatch of any other business except the election of the Speaker, it shall elect a member of the Assembly other than an elected member to be Deputy Speaker of the Assembly; and if the office of Deputy Speaker falls vacant for any reason other than a dissolution of the Assembly, the Assembly shall, as soon as convenient, elect another such member to that office.

(4) A person shall vacate the office of Speaker or Deputy Speaker,

(a) on dissolution of the Assembly;

(b) if he resigns his office by written notice to the Governor;

(c) if a motion for his removal from office receives in the Assembly the affirmative votes of two-thirds of all the members thereof;

(d) if, being a member of the Assembly, he ceases to be a member for any reason other than a dissolution of the Assembly or if, by virtue of section 58 of this Constitution, he is required to cease to perform his functions as a member;

(e) in the case of the Speaker,

(i) if he becomes a member of the Cabinet;

(ii) if, not being a member of the Assembly, any circumstances arise that would cause him to be disqualified for election as a member of the Assembly by virtue of section 55(1) of this Constitution.

(5) The Speaker or, in his absence, the Deputy Speaker or, if they are both absent, a member of the Assembly other than an elected member elected by the Assembly for that sitting shall preside at each sitting of the Assembly.

(6) References in subsection (5) of this section to circumstances in which the Speaker or Deputy Speaker is absent include references to circumstances in which the office of Speaker or Deputy Speaker is vacant.

### **Assembly may transact business notwithstanding vacancies**

**70.** The Assembly shall not be disqualified for the transaction of business by reason of any vacancy in the membership thereof (including any vacancy not filled when the Assembly is first constituted or is reconstituted at any time) and any proceedings therein shall be valid notwithstanding that some person who was not entitled to do so sat or voted in the Assembly or otherwise took part in those proceedings.

### **Quorum**

**71.** (1) If at any sitting of the Assembly a quorum is not present and any member of the Assembly who is present objects on that account to the transaction of business and, after such interval as may be prescribed in the Standing Orders of the Assembly, the person presiding at the sitting ascertains that a quorum is still not present, he shall adjourn the Assembly.

(2) For the purposes of this section a quorum shall consist of a simple majority of the elected members of the Assembly.

### **Voting**

**72.** (1) Save as otherwise provided in this Constitution, all questions proposed for decision in the Assembly shall be determined by a majority of votes of the members present and voting.

(2) The Speaker or other member presiding shall not vote unless on any question the votes are equally divided, in which case he shall have and exercise a casting vote.

### **Summoning of persons to assist Assembly**

**73.** (1) The Speaker or other person presiding may, when in his opinion the business before the Assembly makes it desirable, summon any person to a meeting of the Assembly or to any committee of the Assembly notwithstanding that that person is not a member of the Assembly.<sup>96</sup>

(2) Any person so summoned shall be entitled to take part as if he was a member in the proceedings of the Assembly or of the committee of the Assembly relating to the matter in respect of which he was summoned, except that he may not vote.

### **Introduction of Bills**

**74.** (1) Subject to the provisions of this Constitution and of any Standing Orders of the Assembly, any member may introduce any Bill or propose any motion for debate in, or may present any petition to, the Assembly, and the same shall be debated and disposed of according to the Standing Orders of the Assembly.

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<sup>96</sup> As recommended by paragraph 125 of the 2006 Report.

- (2) Except on the recommendation of the Minister of Finance,<sup>97</sup> the Assembly shall not,
- (a) proceed upon any Bill (including any amendment to a Bill) which in the opinion of the person presiding in the Assembly, makes provision for imposing or increasing any tax, for imposing or increasing any charge on the revenues or other funds of Anguilla or for altering any such charge otherwise than by reducing it or for compounding or remitting any debt due to Anguilla;
  - (b) proceed upon any motion (including any amendment to a motion) the effect of which, in the opinion of the person presiding in the Assembly, is that provision would be made for any of the purposes aforesaid; or
  - (c) receive any petition which, in the opinion of the person presiding in the Assembly, requests that provision be made for any of the purposes aforesaid.

### **Assent to Bills**

**75.** (1) A bill shall not become a law until,

- (a) the Governor has assented to it in Her Majesty's name and on Her Majesty's behalf and has signed it in token of his assent; or
- (b) Her Majesty has given Her assent to it through a Secretary of State and the Governor has signified Her assent by Proclamation.

(2) When a Bill is presented to the Governor for assent the Governor shall declare that he assents to it or that he reserves the Bill for the signification of Her Majesty's pleasure; but unless the Governor has been authorised by a Secretary of State to assent to it, the Governor shall reserve for the signification of Her Majesty's pleasure any Bill which appears to him, acting in his discretion,

- (a) to be inconsistent with any obligation of Her Majesty or of Her Majesty's Government in the United Kingdom towards any other state or power or any international organisation;
- (b) to be likely to prejudice the Royal Prerogative; or
- (c) to be in any way repugnant to or inconsistent with this Constitution.<sup>98</sup>

### **Return of Bills by Governor<sup>99</sup>**

**76.** (1) The Governor may return to the Assembly any Bill presented to him for assent, transmitting therewith any amendment which he may recommend, and the Assembly shall deal with such recommendation.

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<sup>97</sup> As recommended by paragraph 128 of the 2006 Report. Taken with amendment from section 78(2) of the VI Constitution.

<sup>98</sup> Wording taken from section 79(2) of the VI Constitution.

<sup>99</sup> As recommended by paragraph 132 of the 2006 Report.

(2) If the Assembly, having considered the amendment proposed by the Governor under subsection (1), substitutes for it a different amendment, subsection (1) shall apply to that different amendment as it applied to the original Bill.

(3) The Governor shall assent to the Bill on its being returned to him for his assent a second time, with or without the amendment having been accepted.

### **Standing Committees**<sup>100</sup>

**77.** (1) The Assembly shall establish at least two Standing Committees of the House, one of which shall be the Appropriations Committee established under section 121 of this Constitution and the other the Public Accounts Committee established by section 123 of this Constitution, and each of which shall be charged with responsibility for monitoring the conduct of business of the Government for which responsibility has been assigned to a Minister or Ministers under section 39 of this Constitution.

(2) Each Standing Committee shall consist of members of the Assembly who are not Ministers.

(3) The composition of each Standing Committee shall, so far as possible, ensure that the representation of political parties in the Committee is proportionate to the numerical strength of those parties in the Assembly.

(4) Each Standing Committee shall have power,

(a) to summon any Minister, or any public officer of a ministry or department of government for which a Minister or the Governor is responsible, to appear before it;

(b) subject to any law or Standing Orders, to require any person so summoned to testify on oath and provide information about the conduct of business of the Government by the Minister, ministry or department concerned;

(c) to report upon its activities to the Assembly.

(5) For the purposes of effectively performing its functions a standing or other committee may summon any person the committee believes may assist the committee in the performance of its functions and the committee shall have the powers, rights and privileges of the Supreme Court for,

(a) enforcing the attendance of witnesses and examining them on oath, affirmation or otherwise;

(b) compelling the production of documents; and

(c) issuing a commission or request to examine a witness abroad.

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<sup>100</sup> Adapted from section 64 of the TCI Constitution.

(6) Each Standing Committee shall be presided over by a member of the Assembly in opposition to the Government, save as otherwise provided in this Constitution.

(7) The Assembly shall publish reports submitted to it under subsection (4).

(8) Subject to the foregoing provisions of this section, Standing Orders shall provide for the composition and functions of, and proceedings and conduct of business before, Standing Committees.

### **Oath of allegiance**

**78.** Except for the purpose of enabling this section to be complied with, no ex-officio or elected member of the Assembly shall be permitted to take part in its proceedings until he has made before the Speaker an oath of allegiance in the form set out in the Schedule to the Constitution:

Provided that the election of a Speaker and Deputy Speaker of the Assembly may take place before the members thereof have made such oath.

### **Privileges of Assembly and members**

**79.** A law enacted under this Constitution may determine and regulate the privileges, immunities and powers of the Assembly and its members, but no such privileges, immunities or powers shall exceed those of the Commons' House of Parliament of the United Kingdom or of the members thereof.<sup>101</sup>

### **Sessions**

**80.** (1) Subject to the provisions of this Constitution, the sessions of the Assembly shall be held at such places and begin at such times as the Governor, acting in accordance with the advice of the Premier, may from time to time by Proclamation appoint.

(2) There shall be at least one session of the Assembly in every year, so however that there shall be an interval of less than twelve months between the last sitting in one session and the first sitting in the next session.

### **Prorogation and dissolution**

**81.** (1) The Governor, acting in accordance with the advice of the Premier, may at any time, by Proclamation published in the Gazette, prorogue the Assembly.

(2) The Governor, acting after consultation with the Premier, may at any time, by Proclamation published in the Gazette, dissolve the Assembly.

(3) The Governor shall dissolve the Assembly at the expiration of five years from the date when the Assembly first meets after any general election unless it has been sooner dissolved.

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<sup>101</sup> The present Act is the House of Assembly (Powers and Privileges) Act, RSA c H015, which will need to be revised and updated on the adoption of this Constitution.

## **General elections**

**82.** (1) After the coming into effect of this Constitution, there shall be general elections on the first Monday after the 5th anniversary of the last general election.<sup>102</sup>

(2) The polling day for each subsequent general election is to be the first Monday after the 5th anniversary of the previous general election.

(3) The Governor acting on the advice of the Chief Minister may by order made by statutory instrument provide that the polling day for a general election in a specified calendar year is to be later than the day determined under subsections (1) or (2), but not more than two months later.

(4) A statutory instrument containing an order under subsection (3) shall not be made unless a draft has been laid before and approved by a resolution of the House of Assembly.

(5) The draft laid before the House of Assembly containing an order under subsection (3) must be accompanied by a statement setting out the Chief Minister's reasons for proposing the change in the polling day.

(6) An early general election is to take place if the House of Assembly passes a motion of no confidence in the government.

(7). If a general election is to take place as provided for by subsection (6), the polling day for the election is to be the day appointed by the Governor under a law governing elections.

## **CHAPTER 8**

### **THE JUDICATURE<sup>103</sup>**

#### **Eastern Caribbean Supreme Court**

**83.** The Supreme Court Order 1967 shall continue to apply to Anguilla as it applied immediately before the commencement of this Constitution, and accordingly the High Court and the Court of Appeal of the Eastern Caribbean Supreme Court shall continue to have jurisdiction in Anguilla.

#### **Subordinate courts and tribunals**

**84.** There shall be such courts and tribunals in and for Anguilla subordinate to the Eastern Caribbean Supreme Court, and such courts and tribunals shall have such jurisdiction and powers as may be prescribed by any law for the time being in force in Anguilla.

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<sup>102</sup> This provision creates a fixed date for elections, strongly favoured by the public during the October 2016 consultations over the draft new Constitution. The wording is taken from the UK Act.

<sup>103</sup> This provision taken from Chapter 6 of the VI Constitution.

## **Appeals to Her Majesty in Council**<sup>104</sup>

**85.** (1) In the following cases, an appeal shall lie from decisions of the High Court to the Court of Appeal and thence to Her Majesty in Council as of right, that is to say,

- (a) final decisions, in any civil or criminal proceedings, on questions as to the interpretation of this Constitution;
- (b) final decisions in any civil proceedings where the matter in dispute on the appeal is of the value of EC\$2,500 or upwards or where the appeal involves, directly or indirectly a claim to or a question respecting property or a right of the value of EC\$2,500 or upwards;
- (c) final decisions in proceedings under section 18 of this Constitution;
- (d) final decisions in proceedings for dissolution or nullity of marriage; and
- (e) in such other cases as may be prescribed by the Assembly.

(2) In the following cases, an appeal shall lie from decisions of the High Court to the Court of Appeal with the leave of the High Court or of the Court of Appeal and hence to Her Majesty in Council with the leave of the Court of Appeal, that is to say,

- (a) where the decision appealed against is a final decision in civil proceedings and, in the opinion of the court giving leave, the question involved in the appeal is one that, by reason of its great general or public importance or otherwise, ought to be submitted to the Court of Appeal or to Her Majesty in Council, as the case may be; and
- (b) in such other cases as may be prescribed by the Assembly.

(3) The foregoing provisions of this section shall be subject to the provisions of section 63(2) of this Constitution.

(4) In this section the references to final decisions of a court do not include any determination thereof that any application made thereto is merely frivolous or vexatious.

(5) Nothing in this section shall affect any right of Her Majesty to grant special leave to appeal to Her Majesty in Council from the decision of any court in any civil or criminal matter.

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<sup>104</sup> Adapted from section 78 of Mrs Richardson's draft. This is removed from the previous "Miscellaneous" Chapter.



## CHAPTER 9

### INSTITUTIONS PROTECTING GOOD GOVERNANCE

#### **Electoral District Boundary Commission**<sup>105</sup>

**86.** (1) An Electoral District Boundary Commission (in this section referred to as a “Commission”) shall be appointed from time to time at such time as the Governor, after consultation with the Premier and the Leader of the Opposition, may determine; but a Commission shall be appointed not later than ten<sup>106</sup> years after the last Commission submitted its report under section 87 of this Constitution.

(2) A Commission shall consist of,

- (a) a Chairman, being a person who is Anguillian, appointed by the Governor, acting in his discretion.
- (b) a member appointed by the Governor, acting in accordance with the advice of the Premier; and
- (c) a member appointed by the Governor, acting in accordance with the advice of the Leader of the Opposition.

(3) A person shall not be qualified to be appointed as a member of the Commission if he is a member of the Assembly or a public officer other than the holder of a judicial office.

(4) A quorum for meetings of the Commission shall be two.

(5) The Chairman or other member of a Commission shall vacate his office,

- (a) on the day following the submission of the report of the Commission under section 87 of this Constitution;
- (b) if any circumstances arise that, if he were not a member, would cause him to be disqualified for appointment as such; or
- (c) if the Governor, acting in his discretion, directs that he shall be removed from office for inability to discharge the functions of his office (whether arising from infirmity of body or mind or from any other cause) or for misbehaviour.

#### **Review and alteration of electoral district boundaries**<sup>107</sup>

**87.** (1) An Electoral District Boundary Commission shall, as soon as practicable after its appointment under section 86 of this Constitution, review the electoral district boundaries into which Anguilla is divided and, taking into account the changes or

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<sup>105</sup> As recommended by paragraph 77 of the 2006 Report. Taken with amendment from section 57 of the TCI Constitution.

<sup>106</sup> Altered to “ten” from “four” in the original to reflect the intention that the Commission should review the boundaries after every ten-year census.

<sup>107</sup> Wording taken from section 61 of the TCI Constitution, 2011.

proposed changes, if any, in the number of electoral districts, shall submit a report to the Governor and the Assembly containing its recommendations for any changes in the number and boundaries of the electoral districts.

(2) In determining its recommendations under this section, a Commission shall seek to ensure that electoral districts contain, so far as is reasonably practicable, approximately equal numbers of persons qualified to be registered as voters under section 65 of this Constitution and based on any last previous national census findings or report; but a Commission may depart from this principle to such extent as it considers expedient in order to take into account,

- (a) the density of population and, in particular, the need to ensure adequate representation of sparsely populated areas;
- (b) the means of communication;
- (c) geographical features.

(3) As soon as may be after a Commission has submitted a report under this section, the Governor shall cause a Bill to be introduced into the Assembly for giving effect, whether with or without modifications, to the recommendations contained in the report; and such a Bill,

- (a) may contain provisions for any matters which are incidental to or consequential upon its principal provisions; and
- (b) shall include a provision for the coming into force of the measure when enacted for the determination of the electoral districts to which it relates upon the next dissolution of the Assembly after enactment.

(4) Where any Bill introduced under this section proposes to give effect to the recommendations with modifications, there shall be laid before the Assembly at the same time a statement of the reasons for the modifications.

### **Public Service Commission**<sup>108</sup>

**88.** (1) There shall be in and for Anguilla a Public Service Commission which shall consist of five members of whom,

- (a) three shall be appointed by the Deputy Governor,<sup>109</sup> acting in his discretion, and

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<sup>108</sup> As recommended by paragraphs 60 and 141-146 of the 2006 Report. Adapted from section 91 of the VI Constitution, to exclude consultation with teachers and the police who are otherwise represented by their own Commissions).

<sup>109</sup> The original wording of the VI draft amended to reflect the reality that the Deputy Governor is the effective head of the public service.

- (b) two shall be appointed by the Deputy Governor, acting after consultation with the public service staff associations, other than those representing teachers or the police.

(2) A quorum shall be four members.

(3) The Public Service Commission shall advise the Deputy Governor on all matters of appointment, disciplining and remuneration of public servants in the government of Anguilla.<sup>110</sup>

### **Teaching Service Commission<sup>111</sup>**

**89.** (1) There shall be in and for Anguilla a Teaching Service Commission which shall consist of three members, of whom,

- (a) two shall be appointed by the Deputy Governor, acting in his discretion;
- (b) one shall be appointed by the Deputy Governor, acting after consultation with the Anguilla Teachers Union.

(2) A quorum shall be two members.

(3) The Teaching Service Commission shall advise the Deputy Governor on all matters of appointment, disciplining and remuneration of teachers in the government of Anguilla.

### **Police Service Commission<sup>112</sup>**

**90.** (1) There shall be in and for Anguilla a Police Service Commission which shall consist of five members, of whom,

- (a) two shall be appointed by the Deputy Governor, acting in his discretion;
- (b) one shall be appointed by the Deputy Governor, acting in accordance with the advice of the Premier;
- (c) one shall be appointed by the Deputy Governor, acting in accordance with the advice of the Leader of the Opposition; and
- (d) one shall be appointed by the Deputy Governor, acting after consultation with the Police Welfare Association.

(2) A quorum shall be four members.

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<sup>110</sup> Here and in sections 89 and 90, the concluding words, “and shall act in accordance with any Act, and shall have such functions and jurisdiction as may be prescribed by or under any such Act” deleted as being a duplication of the provision in section 103.

<sup>111</sup> Wording taken from section 93 of the VI Constitution.

<sup>112</sup> As recommended by paragraph 63 of the 2006 Report. Wording taken from section 96 of the VI Constitution. During the public consultations in October 2016 there were recommendations that there be provision for a chaplain for the police service, as the chaplain served as a mediator and counsellor for the service. While the Committee consider the appointment of a chaplain a positive idea, it is not considered that this is a matter for the Constitution, but for the Police Act.

(3) Subject to section 91 of this Constitution, the Police Service Commission shall advise the Deputy Governor on all matters of appointment, disciplining and remuneration of police officers in the government of Anguilla.

**Power to appoint, etc., to offices in the Police Service**<sup>113</sup>

**91.** (1) Power to make appointments to offices in the Police Service up to the rank of Inspector and to remove and to exercise disciplinary control over persons holding or acting in such offices shall vest in the Deputy Governor, acting in accordance with the advice of the Police Service Commission appointed in accordance with section 90 of this Constitution; but the Deputy Governor, acting in his discretion, may act otherwise than in accordance with that advice if he determines that compliance with that advice would prejudice Her Majesty's service.

(2) Where the Police Service Commission advises that any person should be appointed to an office in the Police Service of a rank superior to Inspector, that advice shall require the approval of the National Security Commission before being submitted to the Governor; but the Governor, acting in his discretion, may act without the approval of the National Security Commission if he determines that to do otherwise would prejudice Her Majesty's service.

(3) Before exercising the powers vested in the Deputy Governor by subsection (1), or the Governor by subsection (2), the Governor or the Deputy Governor as the case may be may, acting in his discretion, once refer the advice of the Police Service Commission back to the Commission for reconsideration by it.

(4) If the Police Service Commission, having reconsidered its original advice under subsection (3) substitutes for it different advice, subsection (3) shall apply to that different advice as it applies to the original advice.

(5) The Deputy Governor, acting after consultation with the Police Service Commission, may, by regulations published in the Gazette, delegate to any member of the Commission or any public officer or class of public officer, to such extent and subject to such conditions as may be prescribed in the regulations, any of the powers vested in the Deputy Governor to make appointments to offices in the Police Service up to the rank of Inspector and to remove or exercise disciplinary control over persons holding or acting in such offices; and except in so far as regulations made under this subsection otherwise provide, any power delegated by such regulations may be exercised by any person to whom it is delegated without reference to the Police Service Commission.

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<sup>113</sup> Wording taken from section 97 of the VI Constitution.

## **National Security Commission**<sup>114</sup>

**92.** (1) There shall be for Anguilla a National Security Commission which shall consist of,

- (a) the Governor, as Chairman;
- (b) the Deputy Governor;
- (c) the Premier;
- (d) one other Minister appointed in writing by the Governor, acting in accordance with the advice of the Premier;
- (e) the Attorney-General, *ex officio*; and
- (f) the Commissioner of Police, *ex officio*.

(2) A Minister appointed under subsection (1)(c) shall vacate his seat on the National Security Commission if,

- (a) his seat becomes vacant under section 37 of this Constitution; or
- (b) the Governor so directs in writing, acting in accordance with the advice of the Premier.

(3) the National Security Commission shall advise the Governor on matters relating to internal security and the Governor shall be obliged to act in accordance with the advice of the Commission, unless he considers that giving effect to the advice would adversely affect Her Majesty's interest (whether in respect of the United Kingdom or Anguilla); and where the Governor has acted otherwise than in accordance with the advice of the Commission, he shall report to the Commission at its next meeting.

(4) The Commissioner of Police shall,

- (a) provide regular briefings to the National Security Commission on matters of internal security, including the Police Service;
- (b) have responsibility for the day to day operation of the Police Service and shall report regularly on such matters to the Governor; and
- (c) inform the Premier of any significant security developments in Anguilla, including the occurrence of any significant criminal activity.

(5) The National Security Commission may invite any person or summon any public officer to attend and participate in, or provide briefings to, the Commission on the areas of their work bearing on internal security.

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<sup>114</sup> As recommended by paragraph 179 of the 2006 Report. Wording taken from section 57 of the VI Constitution, and amended to include the Deputy Governor.

(6) The Governor, acting in his discretion, may summon a meeting of the National Security Commission whenever he considers it desirable to do so, and the Governor shall summon such a meeting whenever the Premier so requests.

(7) Subject to this section, the National Security Commission may regulate its own procedure.

(8) The Cabinet Secretary shall be the Secretary to the National Security Commission.

(9) The quorum for meetings of the Commission shall be four.

### **Financial Services Commission<sup>115</sup>**

**93.** There shall be for Anguilla a Financial Services Commission which shall be established as a body corporate with perpetual succession and a corporate seal and which shall be responsible for the regulation of the international financial services industry<sup>116</sup> and having such specific functions and powers and a board to be appointed by the Governor all as may be set out in a law.

### **Appointments Commission**

**94.** (1) There shall be in and for Anguilla an Appointments Commission which shall consist of three members, of whom –

(a) one shall be appointed by the Governor, acting in his or her discretion;

(b) one shall be appointed by the Governor, acting in accordance with the advice of the Premier;

(c) one shall be appointed by the Governor, acting in accordance with the advice of the Leader of the Opposition; and

(2) A quorum shall be two members.

(3) No person may be appointed to any government-controlled board, committee or commission not subject to its own separate legislation save with the approval of the Appointments Commission.

(4) The Appointments Commission shall act in accordance with any Act, and shall have such functions and jurisdiction as may be prescribed by or under any such Act.

### **Judicial and Legal Services Commission<sup>117</sup>**

**95.** (1) There shall be for Anguilla a Judicial and Legal Services Commission which shall consist of,

(a) the Chief Justice, who shall be Chairman;

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<sup>115</sup> As recommended by paragraph 58 of the 2006 Report.

<sup>116</sup> As recommended by paragraph 56 of the 2006 Report.

<sup>117</sup> The additional subsections taken from section 94 of the VI Constitution.

- (b) another judge of the Court of Appeal or the High Court nominated by the Chief Justice after consultation with the Governor;
- (c) the Chairman of the Public Service Commission; and
- (d) two other members appointed by the Governor, acting in accordance with the advice of the Premier and the Leader of the Opposition who will each nominate one member, at least one of whom shall be a legal practitioner.

(2) For the purpose of subsection (1)(d), the Premier and the Leader of the Opposition shall alternate in nominating a legal practitioner, with the Premier making the first such nomination upon the commencement of this Constitution, provided that such nomination shall not be construed as precluding the nomination of two legal practitioners under subsection (1)(d).

(3) If the office of a member of the Judicial and Legal Services Commission appointed under subsection (1)(d) becomes vacant or if such a member is for any reason unable to perform the functions of that office, the Governor acting in accordance with the advice of the Premier or the Leader of the Opposition, as the case may be, may appoint another suitably qualified person to that office for the unexpired term of the previous holder of the office or until the holder of the office is able to resume his functions.

(4) Any decision of the Judicial and Legal Services Commission shall require the concurrence of not less than three members of the Commission, and the Commission shall take its decisions in such form and manner as it may determine.

**Power to appoint, etc., to legal offices<sup>118</sup>**

**96.** (1) Power to make appointments to the offices to which this section applies, and to remove and to exercise disciplinary control over persons holding or acting in such offices, shall vest in the Governor, acting in accordance with the advice of the Judicial and Legal Services Commission appointed under section 90 of this Constitution; but the Governor, acting in his discretion, may act otherwise than in accordance with that advice if he determines that compliance with that advice would prejudice Her Majesty's service.

(2) Before exercising the powers vested in the Governor by subsection (1), the Governor may, acting in his discretion, once refer the advice of the Judicial and Legal Services Commission back to the Commission for reconsideration by it.

(3) If the Judicial and Legal Services Commission having reconsidered its original advice under subsection (2), substitutes for it different advice, subsection (2) shall apply to that different advice as it applies to the original advice.

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<sup>118</sup> Wording taken from section 95 of the VI Constitution.

(4) This section applies to the offices of,

(a) Attorney-General;

(b) Director of Public Prosecutions;

(c) Magistrate;

(d) any office in the public service of the Attorney-General's Chambers or of any Registrar or other officer of the High Court who is required to possess legal qualifications;

and to such other offices in the public service, for appointment to which persons are required to possess legal qualifications, as may be prescribed by any law or Government policy for the time being in force in Anguilla.

(5) No person shall be appointed to the office of Attorney-General unless he is qualified to be admitted in Anguilla as a legal practitioner and has had at least ten years' practical experience as a legal practitioner.

(6) No person shall be appointed to the office of Attorney-General unless he is an Anguillian unless, in the opinion of the Judicial and Legal Services Commission, there is no Anguillian who is suitably qualified and able and willing to be so appointed.

(7) No person shall be appointed to the office of Director of Public Prosecutions unless he is qualified to be admitted in Anguilla as a legal practitioner and has had at least seven years' practical experience as a legal practitioner.

(8) A person qualified under subsection (7) shall be appointed to act in the office of Director of Public Prosecutions whenever the office falls vacant and until a person is appointed substantively to that office, or whenever the holder of that office is for any reason unable to perform his functions (including by reason of suspension under subsection (10)).

(9) A person holding the office of Attorney-General, Director of Public Prosecutions, Chief Magistrate or Magistrate, for such period as may be specified in the instrument by which he is appointed, may only be removed from office for inability to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour.

(10) Where the issue of the removal of the Director of Public Prosecutions from office has been referred to the Judicial and Legal Services Commission, the Governor shall suspend the Director of Public Prosecutions from performing the functions of his office pending the outcome of the referral.



## **Integrity Commission**<sup>119</sup>

**97.** (1) The Integrity Commission shall consist of,

- (a) a Chairman, being a person qualified for judicial office, appointed by the Governor, acting in his discretion.
- (b) a member appointed by the Governor, acting in accordance with the advice of the Premier; and
- (c) a member appointed by the Governor, acting in accordance with the advice of the Leader of the Opposition.

(2) A person shall not be qualified to be appointed as a member of the Commission if he is a member of the Assembly or a public officer other than the holder of a judicial office.

(3) The primary responsibility of the Integrity Commission shall be to promote integrity, honesty and good faith in public life in Anguilla.<sup>120</sup>

(4) The Integrity Commission shall,

- (a) have and exercise the functions conferred on it by sections 37, 55, 98 and 126 of this Constitution;
- (b) formulate and publish, after public consultation in Anguilla, a Code of Conduct for Persons in Public Life, keep the Code under review and amend or replace it as it considers necessary or desirable, and, in accordance with any law, investigate any alleged failures to abide by the Code by persons subject to it, either in response to a complaint or on its own initiative;
- (c) contribute to public education about integrity in public life; and
- (d) have and exercise such other functions, for the purpose of fulfilling its primary responsibility under subsection (2), including the imposition of penalties, as may be conferred on it by law.

(5) A quorum for meetings of the Commission shall be two.

(6) The Integrity Commission shall make an annual report to the Assembly about its activities, and shall send a copy of each report to the Governor who shall ensure that any such report is published and made widely available.

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<sup>119</sup> In accordance generally with paragraph 135 of the 2006 Report. The wording is taken from sections 102 and 103 of the TCI Constitution. Note that subsection (5) of the TCI precedent is omitted as being a duplication of section 103.

<sup>120</sup> The Public Service Integrity Board's functions will become redundant. The PSIB Act will need to be repealed.

## **Registration of interests**<sup>121</sup>

**98.** (1) There shall be for Anguilla a Register of Interests, which shall be a public document published on a government website and otherwise made generally available to public scrutiny and maintained by the Integrity Commission.

(2) It shall be the duty of any person to whom this section applies to declare to the Integrity Commission, for entry in the Register of Interests, such interests, assets, income and liabilities of that person, or of any other person connected with him, as may be prescribed by law.

(3) A person shall make a declaration under subsection (2) on assuming the functions of his office and at such intervals thereafter (being no longer than twelve months) as may be prescribed by law.

(4) This section applies immediately upon the coming into effect of this Constitution to all members of the Assembly (including Ministers) and subsequently to the holders of such other offices (except that of Governor) as may be prescribed by law.

(5) A law made by the Assembly shall make provision for giving effect to this section, including the sanctions which may be imposed for failure to comply with, or the making of false statements in purported compliance with, subsections (2) and (3).

## **Anguillian Status Commission**<sup>122</sup>

**99.** (1) There shall be an Anguillian Status Commission for the purpose of granting Anguillian status<sup>123</sup> under the provisions of this Constitution with such functions and membership<sup>124</sup> as may be set out in a law.<sup>125</sup>

(2) For the purposes of this Constitution, a person is an Anguillian if that person is,<sup>126</sup>

(a) a person born or adopted in or outside of Anguilla with a parent or grandparent who was born or adopted in Anguilla and who is regarded as being Anguillian by virtue of this or any previous Constitution;

(b) a person with a great-grandparent who was born in Anguilla and who is regarded as being Anguillian by virtue of this or any previous Constitution, provided that that person has been living (i.e., physically present) in Anguilla

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<sup>121</sup> Adapted from section 112 of the VI Constitution

<sup>122</sup> Wording taken from section 89 of Rev Niles' draft as a substitute for the present section 80 of the 1982 Anguilla Constitution. The principal change is to give the grandchildren of Anguillians full rights and to give the great-grandchildren of Anguillians full rights if they satisfy certain residence requirements.

<sup>123</sup> Note that the intention is that the term "Anguillian" replaces the term "Belonger".

<sup>124</sup> It may be considered prudent to provide for membership and tenure to be protected by the Constitution in a manner similar to section 86(2) rather than relying on section 102(7).

<sup>125</sup> The present law is the Anguilla Belonger Commission Act, RSA c A060, which will need to be replaced and any consequential amendments to existing laws made.

<sup>126</sup> Compare the recommendations at paragraphs 167-178 of the 2006 Report.

- for a continuous period of 5 years and his/her absences from Anguilla do not exceed a total of ninety (90) days in each of those years, save for good and sufficient cause. Such a person must apply to the Anguilla Status Commission for a grant of Anguillian status, which grant may be withdrawn at any time on conviction of an indictable offence;
- (c) a person who has been living in Anguilla for a continuous period of 15 years<sup>127</sup> and whose absences from Anguilla for each of those years do not exceed 90 days save for good and sufficient cause and his minor children born in Anguilla. Such a person must apply to the Anguilla Status Commission for a grant of Anguillian status, which grant may be withdrawn at any time on conviction of an indictable offence;
  - (d) a person who is married to an Anguillian for a period of not less than 5 years. Such a person must apply to the Anguilla Status Commission for a grant of Anguillian status, which grant may be withdrawn at any time on conviction of an indictable offence;
  - (e) the minor child of a person who has been granted Anguillian status by the Anguilla Status Commission on the basis of 15 years residence or marriage where the minor child was born overseas, provided that child has been living (i.e., physically present) in Anguilla for a continuous period of 3 years prior to the application and during each of those years his/her absences from Anguilla do not exceed 90 days, save for good and sufficient cause. An application should be made to the Anguilla Status Commission on behalf of the minor child for a grant of Anguillian status, which grant may be withdrawn at any time on conviction of an indictable offence;
  - (f) a person who is born in Anguilla (and who is not regarded as an Anguillian as provided for above) and who has lived in Anguilla for the first 12 years of his/her life and whose absences from Anguilla during each of those years do not exceed 90 days save for good and sufficient cause. Such a person must apply to the Anguilla Status Commission for a grant of Anguillian status, which grant may be withdrawn at any time on conviction of an indictable offence;
  - (g) a person who was previously granted Belonger status or considered to be a Belonger under an earlier Constitution.<sup>128</sup>

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<sup>127</sup> A question has arisen whether the process of acquiring “Anguillian status” should be made easier as this will complement economic development. The 1976 Constitution’s Belonger provision spoke to 7 years as the benchmark for the granting of Belonger status.

<sup>128</sup> This paragraph needs to be added to make it clear that persons who were “Belongers” under the 1982 Constitution are now to be referred to as “Anguillians”.

### **Advisory Commission on the Prerogative of Mercy**<sup>129</sup>

**100.** (1) There shall be in and for Anguilla an Advisory Commission on the Prerogative of Mercy (in this section referred to as “the Commission”), which shall consist of the Attorney-General, the Director of Health Services and four members appointed by the Governor acting on the advice of the Cabinet for the purpose of advising the Governor on the exercise of his power of pardon under subsection (3) of this section.

(2) A quorum for meetings of the Commission shall be three members, of whom one shall be the Attorney-General.

(3) Acting on the advice of the Commission,<sup>130</sup> the Governor may, in Her Majesty’s name and on Her behalf,

- (a) grant to any person concerned in the commission of any offence for which he may be tried in Anguilla, or to any person convicted of any offence under any law in force in Anguilla, a pardon, either free or subject to lawful conditions;
- (b) grant to any person so convicted a respite, either indefinite or for a specified period, of the execution of any sentence passed on him in respect of the conviction;
- (c) substitute a less severe form of punishment for that imposed on any such person by any such sentence; or
- (d) remit the whole or any part of any such sentence or of any penalty or forfeiture due to Her Majesty by reason of the conviction.

### **Commissions of Inquiry**<sup>131</sup>

**101.** The Governor acting on the advice of Cabinet may appoint one or more Commissioners selected by him to inquire into the conduct and management of any public body, the conduct of any public official, or into any matter that is, in his opinion, of public importance and as may be prescribed by a law.<sup>132</sup>

### **General provisions regarding Commissions**<sup>133</sup>

**102.** (1) Subject to section 122 and to any contrary specific provisions contained in this Constitution, the following general provisions apply to Commissions.

(2) In the exercise of its functions a Commission shall not be subject to the direction or control of any other person or authority.

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<sup>129</sup> Adapted from section 44 of the VI Constitution. See the recommendation at paragraph 163 of the 2006 Report.

<sup>130</sup> As recommended by paragraph 163 of the 2006 Report.

<sup>131</sup> It is appropriate to entrench in Chapter 9 the power to appoint commissioners of inquiry.

<sup>132</sup> There is at present an Act, the Commissions of Inquiry Act RSA c C050, but it is not constitutionally protected.

<sup>133</sup> A consolidation of various provisions governing individual Commissions in other BOT Constitutions, made to avoid duplication of the provisions in the case of every Commission.

(3) A Commission may, with the consent of the Governor acting in his discretion, confer powers and impose duties on any public officer or on any authority of the Government for the purpose of the discharge of its functions.

(4) A Commission may act notwithstanding any vacancy in its membership (including any vacancy not filled when appointments of members are first made) and its proceedings shall be valid notwithstanding that some person who was not entitled to do so took part in them; but any decision of a Commission shall require the concurrence of not less than two members of the Commission.

(5) The Governor, acting after consultation with the Premier, shall appoint one of the members of a Commission to be Chairman of the Commission.

(6) No person shall be qualified to be appointed as a member of a Commission if he is a member of, or a candidate for election to, the Assembly, or holds or is acting in any public office.

(7) Save as otherwise provided by this Constitution, the office of a member of a Commission shall become vacant,

(a) at the expiration of five years from the date of his appointment or such earlier time as may be specified in the instrument by which he was appointed;

(b) if he resigns his office by writing under his hand addressed to the Governor;

(c) if he becomes a member of, or a candidate for election to, the Assembly or is appointed to or to act in any public office; or

(d) if the Governor, acting in his discretion, directs that he shall be removed from office for inability to discharge the functions thereof (whether arising from infirmity of body or mind or any other cause) or for misbehaviour.

(8) If the office of a member of a Commission is vacant or a member is for any reason unable to perform the functions of his office, the Governor acting in the manner prescribed for the appointment of that member may appoint a person who is qualified for appointment as a member of the Commission to act as a member of the Commission, and any person so appointed shall, subject to the provisions of the preceding subsection, continue so to act until he is notified by the Governor acting in his discretion, that the circumstances giving rise to the appointment have ceased to exist:

Provided that, in the case of a vacancy in the office of the Chairman or the inability of the holder thereof to perform his functions, the functions of the office of Chairman shall be performed by such member of the Commission or person acting as a member as the Deputy Governor, acting after consultation with the Premier, may designate.

(9) No business shall be transacted at any meeting of a Commission if there is not a quorum present.

(10) Any question for decision at any meeting of a Commission shall be determined by a majority of the votes of the members present and voting; and if on any question the votes are equally divided the Chairman shall have and exercise a casting vote.

(11) There shall be charged on the revenues of Anguilla and paid thereout to the members of a Commission such emoluments as may be prescribed by any law for the time being in force in Anguilla:

Provided that the emoluments of a member of a Commission shall not be reduced during his continuance in office.

(12) In the exercise of its functions, a Commission may regulate its own procedure.

(13) Each Commission shall report annually to the Assembly on the performance of his office.

(14) The Assembly shall within one month of receipt of each annual report publish it in a widely accessible form.

### **Legislation regarding Commissions**<sup>134</sup>

**103.** (1) Subject to the provisions of this Constitution, the Assembly may by law make provision for,

- (a) the composition and membership of a Commission;
- (b) the quorum for meetings of a Commission where not otherwise provided for in this Constitution;
- (c) the functions of a Commission;
- (d) the organisation of the work of a Commission and the manner in which it performs its functions;
- (e) consultation by a Commission with persons or authorities other than its members;
- (f) the protection and privileges of members of a Commission in respect of the performance of their functions and the privilege of communications to and from a Commission and its members in the case of legal proceedings;
- (g) the definition and trial of offences in relation to the functions of a Commission and the imposition of penalties for such offences;
- (h) the amalgamation of two or more Commissions with the full powers of each of the constituent Commissions under this Constitution in which case if they are

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<sup>134</sup> Adapted from section 98 of the VI Constitution.

service Commissions which are amalgamated the single Commission shall be known as the Service Commission and if there is any other amalgamated Commission it shall be known as the Administrative Law Commission;

- (i) conferring on a Commission other related functions, without prejudice to the functions conferred on such Commission by this Constitution; and
- (j) the establishment of a secretariat, the members of which shall be public officers, of a Commission.

(2) In this section “Commission” means the Electoral Districts Boundary Commission, the Public Service Commission, the Teaching Service Commission, the Police Service Commission, the National Security Commission, the Financial Service Commission, the Appointments Commission, the Judicial and Legal Service Commission, the Integrity Commission, the Anguillian Status Commission, the Advisory Commission on the Prerogative of Mercy, and a Commission of Inquiry.

### **Human Rights Commissioner**<sup>135</sup>

**104.** (1) There is established a Human Rights Commissioner (in this section referred to as (“the Commissioner”).

(2) The powers and duties of the Commissioner (which shall not derogate from the provisions of this section) shall be such as may be prescribed by law and may include the following,

- (a) the receipt and investigation of complaints of breaches or infringement of any right or freedom referred to in Chapter 1;
- (b) the provision of a forum for dealing with, and participation of the Commissioner in promoting conciliation with respect to complaints and disputes concerning any matter relating to Chapter 1;
- (c) issuing guidance on procedures for dealing with any complaints of breaches or infringements of rights and freedoms referred to in Chapter 1;
- (d) imparting knowledge to the public with respect to the rights and freedoms referred to in Chapter 1 or in relation to any international instrument or activity relating to human rights; and
- (e) preparing and submitting periodically reports concerning its activities to the Assembly.

(3) The power of the Commissioner to deal with any matter under Chapter 1 shall be exercised only with the agreement or concurrence of the persons concerned therewith.

(4) Nothing contained in or done pursuant to any law made under subsection (2) shall,

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<sup>135</sup> Adapted from section 19 of Mrs Richardson’s draft.

- (a) oblige a person to refer any complaint of a breach or infringement of any right or freedom referred to Chapter 1 to the Commissioner; or
- (b) prevent a person from seeking redress directly from the court in relation to any breach or infringement of a right or freedom referred to in Chapter 1, and the fact that such person had previously sought the assistance of the Commissioner with respect to such breach or infringement shall not be a bar.

### **Complaints Commissioner**<sup>136</sup>

**105.** There shall be a Complaints Commissioner for Anguilla who shall investigate, resolve and report on complaints from persons who believe that they have suffered injustice as a result of maladministration by any public authority in Anguilla.<sup>137</sup>

### **Police Complaints Commissioner**<sup>138</sup>

**106.** There shall be a Police Complaints Commissioner for Anguilla who shall oversee the handling of complaints of members of the public against members of the Royal Anguilla Police Service.

### **Public Procurement Commissioner**

**107.** (1) Subject to the rights of innocent third parties no goods, works or services or retention or disposal of public property shall be procured save in accordance with an Act of the Assembly designed to accord with the principles of good governance, accountability, transparency, integrity and value for money.<sup>139</sup>

(2) There is established a Public Procurement Commissioner whose duties and responsibilities shall include,

- (a) investigating, on his own initiative or upon complaint from any party involved in public procurement or disposal of public property or any member of the public, any alleged or suspected breach of the Act referred to in subsection (1) of this section; and
- (b) subject to the provisions of this section, any other duty or function that may be conferred on him by the Act referred to in subsection (1) of this section.

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<sup>136</sup> This is the “Ombudsman” provision, as recommended by paragraph 181 of the 2006 Report. The wording is taken from section 110 of the VI Constitution.

<sup>137</sup> “public authority” is a defined term.

<sup>138</sup> By sections 110 and 111 of the VI Constitution, there is a Complaints Commission with such functions and jurisdiction as may be prescribed by law. It is thought preferable to entrench a Police Complaints Commissioner in the Constitution as recommended by paragraph 62 of the 2006 Report.

<sup>139</sup> Wording taken with amendment from the long title and section 6 of the Public Procurement and Disposal of Public Property Act 2015 of Trinidad and Tobago (hereinafter “the Trinidad Act”). The Trinidad Act has been passed, but as of the date of writing has not been brought into effect by the necessary Proclamation.



## **Freedom of Information Commissioner<sup>140</sup>**

**108.** (1) There shall be an independent Freedom of Information Commissioner for Anguilla who shall receive complaints, investigate, decide and report on the compliance of public authorities with the provisions of the Freedom of Information law enacted by the Assembly.

(2) The law shall provide for a right of access to all information held by public authorities, for the conditions for the exercise of that right, and for restrictions and exceptions to that right in the interests of the security of Anguilla or the United Kingdom, public safety, public order, public morality or the rights and interests of individuals.

(3) In the event that a report prepared by one of the institutions protecting good government is not published contemporaneously with its delivery or within a reasonable time thereafter in a manner designed to give the widest public access to its contents, then the Commissioner shall secure a copy of the report and cause it to be published on an appropriate Anguilla government website.

## **Supervisor of Elections<sup>141</sup>**

**109.** (1) There shall be a Supervisor of Elections for Anguilla appointed by the Governor who shall oversee all matters relating to the holding of elections and referendums.

(2) Subject to section 110, the Supervisor of Elections shall have such other functions and jurisdiction as may be prescribed by law.

## **General provisions relating to Commissioners<sup>142</sup>**

**110.** (1) Subject to any specific provision made above, the following shall apply to any Commissioner appointed under this Constitution.

(2) A Commissioner shall be appointed for a minimum period of five (5) years by the Governor, acting after consultation with the Premier and the Leader of the Opposition, by instrument under the public seal.

(3) No person shall be qualified to be appointed as a Commissioner if he has been within the preceding three years,

- (a) an elected member of the Assembly; or
- (b) the holder of any office in any political party.

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<sup>140</sup> Drafted to ensure that all reports from institutions guaranteeing good governance are published contemporaneously with their delivery, and for the Commissioner to enforce such publication.

<sup>141</sup> It has been recommended that independence of the Supervisor of Elections from political interference be constitutionally protected.

<sup>142</sup> Adapted and consolidated from provisions relating to individual Commissioners in the Constitutions of other BOTs. The question has been raised whether there should not be a minimum qualification (academic, professional, or by experience) for Commissioners.

- (4) The office of a Commissioner shall become vacant,
- (a) at the expiration of the period specified in the instrument by which he was appointed;
  - (b) if he resigns office by writing under his hand addressed to the Governor;
  - (c) if he becomes an elected member of the Assembly or the holder of any office in any political party; or
  - (d) if the Governor, acting in his discretion, directs that he shall be removed from office for inability to discharge the functions of the office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour, or for contravention of subsection (5).
- (5) Subject to such exceptions as the Governor, acting in his discretion, may authorise by directions in writing, a Commissioner shall not hold any other office of emolument either in the public service or otherwise nor engage in any occupation for reward other than the duties of his office.
- (6) In the exercise of his functions, a Commissioner shall not be subject to the direction or control of any other person or authority.
- (7) Subject to section 122 of this Constitution, there shall be charged on the revenues of Anguilla and paid thereout to every Commissioner such emoluments as may be prescribed by any law for the time being in force in Anguilla:
- Provided that the emoluments of a Commissioner shall not be reduced during his continuance in office.
- (8) The same person may be appointed by the Governor to fill two or more Commissions under this Constitution in which case he shall be known as the Constitutional Commissioner.
- (9) Subject to the provisions of this Constitution, the Assembly may by law make provision for,
- (a) the functions and jurisdiction of a Commissioner;
  - (b) the organisation of the work of a Commissioner and the manner in which he performs his functions;
  - (c) consultation by a Commissioner with persons or authorities other than its members;
  - (d) the protection and privileges of a Commissioner in respect of the performance of his functions and the privilege of communications to and from a Commissioner in the case of legal proceedings;

- (e) the definition and trial of offences in relation to the functions of a Commissioner and the imposition of penalties for such offences;
- (f) conferring on a Commissioner other related functions, without prejudice to the functions conferred on such Commissioner by this Constitution; and
- (g) the establishment of a secretariat, the members of which shall be public officers, of a Commissioner.

(10) Each Commissioner mentioned in sections 104 to 109 of this Constitution shall report annually to the Assembly on the performance of his office.

(11) The Speaker shall within one month of receipt of any report from a Commissioner publish it in a widely accessible form.

(12) For the purposes of this section “Commissioner” means the Human Rights Commissioner, the Complaints Commissioner, the Police Complaints Commissioner, the Public Procurement Commissioner, the Freedom of Information Commissioner; and the Supervisor of Elections.

### **Public assets**

**111.** (1) Subject to the provisions of any law for the time being in force in Anguilla, the Governor or any person duly authorised by him in writing under his hand may, in Her Majesty’s name and on Her behalf, make and execute under the public seal grants, leases, charges and dispositions of any significant public asset including land in excess of a half-acre, and mineral and fishing rights belonging to Anguilla that may be lawfully dealt with by Her Majesty.

(2) No Crown land in excess of one half-acre, or lease or charge over any such land in Anguilla may be sold, leased, charged, exchanged, or otherwise disposed of or dealt with without a resolution of the Assembly authorising the transaction.<sup>143</sup>

## **CHAPTER 10**

### **PUBLIC FINANCE<sup>144</sup>**

#### **General principles<sup>145</sup>**

**112.** (1) The macro-economic and fiscal policies of the Government shall be formulated and conducted for the sustained long term prosperity of the people of Anguilla.<sup>146</sup>

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<sup>143</sup> As recommended by paragraph 162 of the 2006 Report.

<sup>144</sup> Taken from the “revised alternate draft of 9 June 2015” of the Anguilla Public Finance Order 2015 (hereinafter “the draft Order”) without alteration save as may be indicated in these footnotes.

<sup>145</sup> Section 3 of the draft Order, amended to take account of the Terms of Reference agreed between the Government of Anguilla and the Foreign and Commonwealth Office.

<sup>146</sup> An existing obligation under section 3 of the Fiscal Responsibility Act, RSA c F038 (hereinafter “c F038”).

- (2) Public funds shall be managed according to established principles of value for money, affordability and regularity and the interests of long term financial stability.
- (3) The Government shall formulate a framework document (to be called a “Fiscal Framework”)<sup>147</sup> stating its principles of public financial management which sets,
- (a) limits on levels of public debt relative to public revenue;
  - (b) limits on debt service costs as a proportion of recurrent public revenue; and
  - (c) levels of reserves relative to public expenditure.
- (4) Any Fiscal Framework formulated under subsection<sup>148</sup> (3) must be agreed by a Secretary of State in draft before it is adopted by the Government, and the Government shall publish the Fiscal Framework in the Gazette as soon as possible after its adoption.
- (5) On the date of publication of the first Fiscal Framework under subsection (4), the Fiscal Responsibility Act 2013 (RSA c 9 of 2013) shall be repealed.
- (6) The Minister of Finance shall report to the Assembly at least every six months on,
- (a) the performance of the government in implementing the Fiscal Framework; and
  - (b) the state of the public finances and the state of the economy of Anguilla.
- (7) The Government shall aim towards achieving and maintaining a surplus budget, and where an Appropriation Bill would not return a surplus result the Minister of Finance shall, at the same time as the Bill is introduced in the Assembly, lay before the Assembly a statement explaining the reasons for not achieving a surplus.
- (8) Where the Government is in breach, or in the opinion of a Secretary of State is in breach or is likely to be in breach, of the Fiscal Framework,
- (a) all Appropriation Bills or any other Bill or significant decision relating to the public finances of Anguilla, including proposals for the Government to borrow, must first be agreed by a Secretary of State; and
  - (b) the Government shall be required to agree with a Secretary of State a Medium Term Fiscal Plan which includes milestones for meeting key debt ratios and clearly articulated policy measures that will lead the Government to come into compliance with the key debt ratios set out in a Fiscal Framework and agreed by a Secretary of State.<sup>149</sup>

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<sup>147</sup> An existing obligation under section 2 of c F038.

<sup>148</sup> The words “paragraph” and “sub-paragraph” in the original draft Order have been replaced by the words “section” and “subsection” to be consistent with Anguillian drafting standards for legislation.

<sup>149</sup> An existing obligation under section 5 of c F038.

## **Taxation**<sup>150</sup>

**113.** (1) No tax, rate or other levy shall be imposed, and no waiver or variation of any tax, rate or other levy shall be applied, except under the authority of an Act.

(2) Where an Act confers power on any person or authority to waive or vary a tax,<sup>151</sup> rate or other levy imposed by that Act, that person or authority shall report to the House of Assembly on the exercise of those powers as often as shall be determined by law but not less than every six months.<sup>152</sup>

## **Contingent liabilities**<sup>153</sup>

**114.** The Minister of Finance shall ensure that all contingent liabilities of the Government, including pension and healthcare liabilities, are subjected to independent actuarial assessment at least every two years, and shall report the information provided by any such assessment to the Assembly within two months of receiving it.

## **Consolidated Fund**<sup>154</sup>

**115.** (1) There shall continue to be a Consolidated Fund for Anguilla into which shall be paid all revenues or other monies raised or received by and for the purposes of the Government.

(2) The revenues or other monies referred to in subsection (1) shall not include revenues or other monies,

(a) that are payable by or under an Act into some other fund for a specific purpose; or

(b) that may, by or under an Act, be retained by the department of government that received them for the purpose of defraying the expenses of that department.

(3) Any sums standing to the credit of the Consolidated Fund may be invested,

(a) with a bank at call or subject to notice not exceeding twelve months; or

(b) in an investment authorized by law and approved by the Assembly.

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<sup>150</sup> Section 4 of the draft Order.

<sup>151</sup> For example, the power of the Governor in Council under section 7 of the Public Entertainment Tax Act, RSA c P120 to remit the tax in the case of a charity; or of the Comptroller of Inland Revenue under section 12 of the Inland Revenue Act, RSA c I03 to waive interest or a penalty; or of the designated authority (the Governor in Council or its delegate) under section 7 of the Financial Administration and Audit Act, RSA c F027 (hereinafter “c F027”) to write off debts owed to the Government of Anguilla.

<sup>152</sup> Power to waive or vary is conferred on the Governor in Council by section 16 of c F027, and must be done by Regulation, and if more than \$1,000.00 requires the approval of the House of Assembly.

<sup>153</sup> Section 5 of the draft Order.

<sup>154</sup> Section 6 of the draft Order.

(4) For the avoidance of doubt any investment or deposit made under subsection (3) shall not constitute a withdrawal from the Consolidated Fund.

### **Withdrawal from Consolidated Fund or other public funds**<sup>155</sup>

**116.** (1) No monies shall be withdrawn from the Consolidated Fund except,<sup>156</sup>

- (a) to meet expenditure charged on the Consolidated Fund by any law in force in Anguilla; or
- (b) where the issue of those monies has been authorized by an Appropriation Act, or as provided in subsection (3).

(2) No monies shall be withdrawn from any public fund of Anguilla other than the Consolidated Fund unless the issue of those monies has been authorized by law.<sup>157</sup>

(3) If the Minister of Finance is satisfied that the Appropriation Act in respect of any financial year will not come into force by the beginning of that financial year, the Minister may, if so authorized by the Assembly by resolution and subject to subsection (4), authorize the issue of monies from the Consolidated Fund for the purpose of meeting expenditure necessary to carry on the services of the Government until the expiration of four months from the beginning of that financial year or the coming into force of the Appropriation Act, whichever is the earlier.

(4) Any sum issued in any financial year from the Consolidated Fund under subsection (3) in respect of any ongoing service of the Government,

- (a) shall not exceed one third of the amount approved for that service in an Appropriation Act for the previous financial year; and
- (b) shall be set off against the amount provided in respect of that service in the Appropriation Act for that financial year when the Act comes into force.

### **Financial year estimates**<sup>158</sup>

**117.** At least six weeks before the beginning of each financial year the Minister shall cause to be prepared and laid before the Assembly,<sup>159</sup>

- (a) estimates of revenue and expenditure of the Government for that financial year; and

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<sup>155</sup> Section 7 of the draft Order.

<sup>156</sup> Presently provided for by section 22 of F027.

<sup>157</sup> The present powers of the Minister under section 28 of c F027 to issue “contingency warrants” to spend money not authorised; or under section 29 by a “virement warrant” to vary the amount authorised; or under section 30 by a “reallocation warrant” to switch amounts from head to head, which the Chief Auditor has regularly reported to have been subject to abuse, are not continued.

<sup>158</sup> Section 8 of the draft Order.

<sup>159</sup> The duty to lay the estimates is presently provided for by section 23 of c F027.

- (b) a document setting out targets for revenue and expenditure for the next three financial years, and an assessment of performance against the debt sustainability limits as set out in the Fiscal Framework,<sup>160</sup>

and the Assembly shall publish those estimates and that document without delay.

### **Appropriation Bill**<sup>161</sup>

**118.** (1) The heads of expenditure contained in the estimates, other than expenditure charged on the Consolidated Fund by any law in force in Anguilla, shall be included in a bill, to be known as an Appropriation Bill, which shall be introduced into the Assembly to provide for the issue from the Consolidated Fund of the sums necessary to meet that expenditure and the appropriation of those sums for the purposes specified in the Bill.<sup>162</sup>

(2) If in respect of any financial year it is found that the amount appropriated for any purpose under the Appropriation Act is insufficient or that a need has arisen for expenditure for a purpose for which no amount has been appropriated by that Act, a supplementary estimate showing the sums required shall be laid before the Assembly by the Minister of Finance.<sup>163</sup>

(3) The heads of expenditure contained in a supplementary estimate shall be included in a Bill, to be known as a Supplementary Appropriation Bill, which shall be introduced into the Assembly to provide for the issue from the Consolidated Fund of the sums specified in the Bill.

(4) The Governor, with the prior approval of a Secretary of State, may refuse to assent to any Appropriation Bill or Supplementary Appropriation Bill if in his judgment the enactment of that Bill would be inconsistent with section 107 of this Constitution or the Fiscal Framework.

### **Power of Government to borrow or lend**<sup>164</sup>

**119.** (1) Subject to the provisions of this Constitution, the Government may borrow from any source.<sup>165</sup>

(2) The Government shall not borrow, guarantee or raise a loan on behalf of itself or any other public institution, authority or person except,

- (a) as authorized by or under an Act; and

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<sup>160</sup> The present requirement for a Strategic Plan is found at section 7 of c F038.

<sup>161</sup> Section 9 of the draft Order, amended to take account of the Terms of Reference agreed between the Government of Anguilla and the Foreign and Commonwealth Office.

<sup>162</sup> The obligation to submit to the Assembly an annual budget is an existing obligation under section 5 of c F038.

<sup>163</sup> The need for supplementary estimates is presently provided for by section 27 of c F027.

<sup>164</sup> Section 10 of the draft Order.

<sup>165</sup> The power to borrow is presently provided for by section 37 of c F027.

- (b) in accordance with the Fiscal Framework and any other borrowing guidelines agreed with Her Majesty's Government in the United Kingdom.
- (3) An Act enacted under subsection (2)(a) shall provide,
- (a) that the terms and conditions of the loan shall be laid before the Assembly and shall not come into force unless they have been approved by a resolution of the Assembly; and
- (b) that any monies received in respect of that loan shall be paid into and form part of the Consolidated Fund or into some other public fund which exists or is created for the purpose of the loan.
- (4) The Minister shall, at such times as the Assembly may determine and at least every six months, cause to be presented to the Assembly such information concerning any loan as is necessary to show,
- (a) the extent of the total indebtedness by way of principal and accumulated interest;
- (b) the provision made for servicing or repayment of the loan; and
- (c) the utilization and performance of the loan.
- (5) Where Her Majesty's Government in the United Kingdom<sup>166</sup> Guarantee is given in connection with any borrowing under this section, the Government shall repay the guaranteed borrowing as quickly as possible.
- (6) The Governor may, on behalf of the Government, enter into counter-indemnity arrangements with Her Majesty's Government in the United Kingdom in relation to any Guarantee in connection with any borrowing under this section, and shall ensure compliance by the Government with its obligations under any such arrangements.
- (7) The Assembly may, by resolution, authorize the Government to enter into an agreement for the giving of a loan or a grant out of any public fund or public account.
- (8) An agreement entered into pursuant to subsection (7)<sup>167</sup> shall be laid before the Assembly and shall not come into force unless it has been approved by the Assembly by resolution.
- (9) Any resolution passed by the Assembly under subsections (7) or (8) must be compatible with section 112 of this Constitution and the Fiscal Framework.<sup>168</sup>

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<sup>166</sup> The wording in the original is amended to refer to the UK Government, as Departments may be renamed.

<sup>167</sup> The original has "(5)," but from the context it is apparent that "(7)" was intended.

<sup>168</sup> The original has "(5) or (6)," but from the context it is apparent that "(7) and (8)" were intended.



(10) For the purposes of this section, “loan” includes any money lent or given to or by the Government on condition of return or repayment and any other form of borrowing or lending in respect of which,

(a) monies from the Consolidated Fund or any other public fund may be used for payment or repayment; or

(b) monies from any fund by whatever name called, established for the purpose of payment or repayment whether in whole or in part and whether directly or indirectly, may be used for payment or repayment.<sup>169</sup>

### **Exercise of functions by Governor<sup>170</sup>**

**120.** In the exercise of any function conferred on the Governor by sections 112 to 119,<sup>171</sup> of this Constitution the Governor shall comply with any instructions that may be given to him by a Secretary of State.<sup>172</sup>

### **Appropriations Committee<sup>173</sup>**

**121.** (1) There shall be an Appropriations Committee of the Assembly, which shall consist of at least three members of the Assembly appointed by the Speaker from among members who are not Ministers, at least one of whom shall be a member of the house in opposition to the Government.

(2) The Appropriations Committee may co-opt to its membership up to two persons who are not members of the Assembly, either on a continuing basis or for the purpose of a specific enquiry conducted by the Committee, and shall be assisted in its work by the Permanent Secretary, Finance, or his nominee and permanent Committee staff.

(3) The Appropriations Committee shall have power to compel the production of documents and evidence from Ministers, departments of government and public officers, and shall meet in public.

(4) The Appropriations Committee shall have and exercise the functions conferred on it by this Constitution and such other functions as may be conferred on it by any other law or by Standing Orders.

(5) The House of Assembly shall publish all reports of the Appropriations Committee without delay.

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<sup>169</sup> Note that the section next following in the draft Order has been omitted to take account of the Terms of Reference agreed between the Government of Anguilla and the FCO.

<sup>170</sup> Section 12 of the draft Order.

<sup>171</sup> The words “this Order” replaced by “sections 104 to 112.”

<sup>172</sup> Subsections (1) and (2) are omitted to take account of the Terms of Reference agreed between the Government of Anguilla and the Foreign and Commonwealth Office.

<sup>173</sup> Taken from section 114 of the TCI Constitution.

## **Funding of institutions protecting good governance**<sup>174</sup>

**122.** (1) An institution protecting good governance shall be provided with an office, and with staff and administrative facilities, appropriate to the institution's responsibilities.

(2) The salaries and allowances of the staff of the institution are charged on and shall be paid out of the Consolidated Fund.

(3) Notwithstanding subsections (1) and (2), the Governor after consultation with the Chief Minister and the Leader of the Opposition may confer powers and impose duties on any public officer or any authority of the Government for the purpose of the discharge of any of the institution's functions.

(4) Before the 31<sup>st</sup> of August of the preceding year,<sup>175</sup>

(a) each institution protecting good governance shall submit to the Appropriations Committee of the Assembly a bid for its budget for the following financial year;

(b) the Appropriations Committee shall scrutinise each bid in public hearings and, having satisfied itself that the bid conforms to the Government's current budget policies and made any amendments it considers necessary for that purpose, recommend to the Assembly a budget for each institution for that financial year.

(5) The Assembly may pass or reject a budget recommended to it under subsection (1)(b) but may not amend it.

(6) If the Assembly passes a budget recommended to it under this section, that budget shall form part of the Appropriation Act for that financial year.

(7) If the Assembly rejects a budget recommended to it under subsection (1)(b), the Appropriations Committee shall reconsider the budget in question and, after consulting the institution concerned, recommend a revised budget to the Assembly; and the same procedure shall be followed if the Assembly rejects a revised budget recommended to it.<sup>176</sup>

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<sup>174</sup> Adapted from section 105 of the TCI Constitution. (Unless the provision of resources for these institutions is removed from the control of the Minister of Finance and placed in the hands of the Assembly, experience elsewhere in the West Indies has shown that a Commission that has fallen out of favour with a Government can be neutralised by starving it of funds). Subsection (1) provides additional support, as approved by the Appropriations Committee and the Assembly, for these institutions.

<sup>175</sup> Amended to ensure the preparation of each institution's budget is timed so as to fit into the overall budgetary process.

<sup>176</sup> Subsection (5) of the TCI provision is deleted to take account of the Terms of Reference agreed between the Government of Anguilla and the Foreign and Commonwealth Office

## **Public Accounts Committee<sup>177</sup>**

**123.** (1) There shall be a Public Accounts Committee of the Assembly which shall consist of,

- (a) at least three members of the Assembly appointed by the Speaker from among members who are not Ministers; and
- (b) two persons expert in public finance who are not members of the Assembly, one of whom shall be appointed by the Speaker and one of whom shall be appointed by the Governor acting in his discretion.

(2) the Chairman of the Public Accounts Committee shall be the Leader of the Opposition.

(3) A person appointed under subsection (1)(b) shall cease to be a member of the Public Accounts Committee,

- (a) at the expiration of the period for which he was appointed;
- (b) if he becomes a member of the Assembly; or
- (c) if the person who made the appointment revokes it, acting in his discretion.

(4) If in respect of any item of business before the Public Accounts Committee the Governor, acting after consultation with the Speaker and the Chairman of the Committee, considers that a member of the Committee has a conflict of interest, the Governor, acting in his discretion, may appoint another person (whether or not a member of the Assembly) temporarily to replace that member of the Committee for the purpose of dealing with the business in question, and a member so replaced shall not sit on the Committee when the Committee is dealing with that business.

(5) The Public Accounts Committee shall examine and report to the Assembly on,

- (a) the reports submitted to the Committee by the Chief Auditor under section 126 of this Constitution; and
- (b) such management letters and reports of the Chief Auditor as have been submitted to the Committee or as have been laid before the House or as the Chief Auditor has brought to the attention of the House;

and shall have and exercise such other functions, and shall operate under such procedures, as may be prescribed by this Constitution or as may be prescribed by Act or by Standing Orders.

(6) The Public Accounts Committee shall report to the Assembly by the date set by the Assembly or by its terms of reference, whichever is the earlier; and except as otherwise

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<sup>177</sup> As recommended by paragraph 126 of the 2006 Report. Taken from section 122 of the TCI Constitution.

provided in the Committee's terms of reference, such a report may be with or without recommendations.

(7) If the Assembly adopts a report of the Public Accounts Committee, and requests the responsible member of the Cabinet to advise the Assembly of the action proposed to be taken by the Government in respect of the report, the member concerned shall convey the Government's response to the House not later than the first sitting day following the expiration of six weeks after the date of the House's request, unless the Assembly extends the time for the response.

(8) The Chief Auditor shall be adviser to the Public Accounts Committee, and the Committee shall not meet without the presence of the Chief Auditor or his nominee.

(9) The Public Accounts Committee may invite any person to assist it in its work and to participate in its proceedings.

### **Accounting officers**<sup>178</sup>

**124.** (1) There shall be an Accountant General of the Government, whose office shall be a public office.<sup>179</sup>

(2) The Accountant General shall be responsible for the compilation and management of the accounts of the Government, and for the custody and safety of public money and other resources of the Government.

(3) The most senior officer in each ministry or department of government and each institution protecting good governance<sup>180</sup> shall be designated an accounting officer who shall be responsible for the regularity and propriety of the expenditure, receipts and resources of that ministry, department or institution, and shall be accountable to the Assembly.<sup>181</sup>

### **Remuneration of Speaker and other members of Assembly**<sup>182</sup>

**125.** (1) There shall be paid to the Speaker and other members of the Assembly such remuneration and allowances as may be prescribed by an Act.

(2) The Assembly shall not proceed on any Bill for an Act referred to in subsection (1) unless a report by the Integrity Commission recommending the appropriate levels of such remuneration and allowances has been laid before the Assembly and has been

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<sup>178</sup> Taken from the TCI Constitution, section 123.

<sup>179</sup> Presently appointed by section 7 of c F027.

<sup>180</sup> Subsection (4) is deleted as it appears redundant, "each department of government and each institution protecting good governance" in subsection (3) needing no further clarification.

<sup>181</sup> Amended to take account of the Terms of Reference agreed between the Government of Anguilla and the Foreign and Commonwealth Office.

<sup>182</sup> Taken from the TCI Constitution, section 124.

published; and no Act shall provide for levels of remuneration or allowances that exceed the levels recommended in such report.

(3) The remuneration and allowances payable to the Speaker and other members of the Assembly are hereby charged on and shall be paid out of the Consolidated Fund.

**Audit**<sup>183</sup>

**126.** (1) There shall be a Chief Auditor whose office shall be a public office.

(2) The accounts of the Assembly and all government departments and offices (including all Commissions and individual Commissioners) shall be audited and reported on annually by the Chief Auditor, and for that purpose the Chief Auditor or any person authorised by him in that behalf shall have access to all books, records, returns and other documents relating to such accounts.

(3) In the exercise of his functions under this section, the Chief Auditor shall not be subject to the direction or control of any other person or authority.

(4) The Chief Auditor shall submit his reports made under subsection (2) of this section to the Speaker of the Assembly who shall lay them before the Assembly; and the Chief Auditor shall also send a copy of each report to the Governor.<sup>184</sup>

(5) Within one month of the laying of a report before the Assembly, the Speaker shall cause such report to be published in a widely accessible form.

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**THE SCHEDULE TO THE CONSTITUTION**

**FORMS OF OATHS AND AFFIRMATIONS**

**Sections 29(4), 31(2), 43 and 78**

*1. Oath of Allegiance*

I ..... do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, according to law. So help me God.

*2. Oath for due execution of office*

I ..... do swear that I will well and truly serve Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, in the office of .....  
(*here insert the description of the office*). So help me God.

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<sup>183</sup> Based on section 109 of the VI Constitution.

<sup>184</sup> Amendment made to the original drafting to improve clarity of wording.

### 3. *Affirmations*

In the forms above respectively set forth, for the word “swear” there shall be substituted the words “solemnly and sincerely affirm and declare”, and the words “So help me God” shall be omitted.

## APPENDIX

### Thomas WR Astaphan QC's proposals for constitutional and electoral reform for Anguilla

**From:** Thomas W.R. Astaphan Q.C.

**Sent:** Thursday, January 12, 2017 6:46 AM

**To:** Don Mitchell

**Subject:** Re: Constitutional and Electoral Reform Committee

Dear Don:

Please Record my objection to the Draft being presented as-is, and as being the consensus of the People of Anguilla, which it is decidedly NOT.

It is not the consensus because its contents were not discussed adequately with even a small minority of the population of Anguilla, and it does not contain any item originating from the People, or from any other person, other than the majority of your Committee. It is, in short, a product of the thoughts, ideas, ideology, beliefs, wishes, desires and opinions of the Members of your Committee. Nothing more, nothing less.

I am of the view that it is also deeply flawed in both its intent and its content, the latter of which is a product of the approach taken to its creation, namely, looking at other Constitutions, and taking from them what was thought *by the Committee* should be in this Draft. No real substantive consultations have been held. No innovation at all has been engaged. No substantive changes are suggested, and purely cosmetic adjustments have been made.

Whenever I submitted a suggestion to you for consideration, it was shot down by your Committee without ever been brought up for discussion at the so-called "Town Hall Meetings ". Thus the Public were not exposed to a different view before an impression of their positions was *formed by your Committee and*

*reduced into your Committee's Draft.* Then some of my suggestions were attached thereto as a Schedule - in truth an afterthought.

This is an injustice to the People of Anguilla, especially at this time of fundamental and debilitating Economic, Social and Political turmoil, brought about by what has turned out to be disastrous decisions, by both "voters" and those "voted" into office. This experience makes it doubly important that the innovations I suggested be brought before the People, and not be dismissed out of hand by your Committee, as has been the case.

There is no need to rush to a conclusion. The People are now becoming more engaged in Political and Social events, given the downward spiral which has grasped Anguilla. Now is the time to engage them on what they would like *THEIR* Constitution to be. They will respond. Your attempts of the last two years to meet with them IS NOT an indication of their willingness to engage NOW !!

Armed with the experience of the past two years, the People of Anguilla desperately want to embrace a system where THEY retain Political power at all times so that this disaster will not be repeated.

The problem for the People of Anguilla is that, once this "Committee- created" cosmetic "New" Constitution is "adopted" by the powers that be, it will be decades before the British Colonial Imperial Masters entertain any discussion about Constitutional change in Anguilla. That is why we MUST get it right now. There may well be no "second chance."

Anguilla needs to put Political Power into the hands of the People, and NOT leave it in the hands of the Politicians - both British and Anguillian.

Anguilla needs to introduce direct island wide election to Ministerial Office, thereby removing the powers of Political Parties and Party Leaders, and making the Prime Minister just another Member of Cabinet who chairs its meetings. The Constitution must set out minimum qualifications to hold specific Public Offices.



This will provide an avenue for the election of persons who are *actually qualified to do the jobs*. This would, in and of itself, bring efficiency and professionalism to Governance - the Attorney-General must be a qualified Lawyer of a certain experience, so why shouldn't the Minister of Infrastructure not be required to be properly qualified in the disciplines covered by that Ministry?. After all, an Hotel would not employ as its Accountant a Baker, so why should Anguillians "employ" a Minister of a particular Ministry who is NOT qualified in the necessary discipline to run that Ministry? Is Anguilla less important than an Hotel??

Recall must be introduced - both of elected persons AND of Legislation passed - so that Democracy can prevail every day, and not only when an election is called.

The Cabinet MUST comprise suitably qualified persons elected directly to it and NOT be made up of, or include persons elected to the Legislature - introducing to the Caribbean true Separation of Powers.

The Legislative seats must be expanded to cover each community/village; Members must NOT be paid a monthly emolument; must attend at least 75% of each day that the House sits before they are paid a per diem - keep your day jobs, no fat salary cheque because you chose to beg the People to serve them.

Independence MUST be guaranteed in the new Constitution with the mechanism for its trigger set out therein.

All Public Offices, including election to the Boards of Corporations in which the State is a shareholder - in which case the voters should determine whom shall be the candidate to represent the State's shares at the AGMs of such corporations, and to run for vacant seats on the Board etc. - MUST be elective. No appointments by Politicians, Political Party Leaders or Hacks, or Governors.

All Public Service jobs MUST be on Contract, not lifetime, "Established" or "Permanent".

Education and Healthcare MUST be guaranteed by the State.

All Elections Rules must be founded in the Constitution.

The business of the Legislature MUST be expressly made to be subject to the Constitution.

Cabinet and Legislative Meetings MUST be held in Public.

There must be an Independent Elected Office which shall oversee the conduct of Public Affairs - like an Ombudsman.

Citizenship must be expressly defined in its different classes - one day Anguilla may wish to sell Economic Citizenship, and the Constitution must therefore provide for the creation of a Class of Economic Citizenship which carries all or most of the Rights of "Natural" Citizenship, but excludes voting rights etc. And Yes, there should be different categories of Citizenship, the details of which I am prepared to discuss with the appropriate persons at the appropriate time.

The Fundamental Rights Chapter MUST be improved to expand the Rights expressly covered, and to manifestly guarantee Rights NOT mentioned, and for that matter, those not recognized as such *at this time*.

In other words, the new Anguilla Constitution must set an innovative, unique Standard for the World; not be a "cut & paste" of what others thought *that they* wanted for themselves. It is a Living Document and must be designed to be flexible enough to fit the needs of the People of Anguilla as time passes.

It MUST give the Power to enter into Agreements and Treaties with overseas States, Institutions and etc. TO THE PEOPLE - by way of having to Ratify them by Vote before they come into force - so that Anguilla is NEVER AGAIN saddled with the likes of "The Eastern Caribbean Central Bank Agreement Act@, its children

which are an anchor around the neck of a drowning Anguilla, and all those  
Treaties forced upon Anguilla by the British, and meekly rubber-stamped by our  
weak-willed Politicians - ALL of them !!

...

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**DRAFT NEW ELECTIONS BILL**  
**EXPLANATORY MEMORANDUM**

The Constitutional and Electoral Reform Committee, acting upon its mandate given to it by the Executive Council of Anguilla in September 2015, has arrived at proposals for submission to Executive Council for the reform of the elections law of Anguilla. The Committee was assisted in its work by Ms Aurjul Wilson, Supervisor of Elections, and by Mr Wycliffe Richardson of ATV 3, a past electoral officer, both well versed in elections law and procedure, and whose contributions proved very useful.

It is proposed that there will be a new Elections Act, the passage into law of which does not and will not depend on the coming into effect of the new Constitution. It is expected that the new law, as finally settled by the legal draftspersons in the Attorney-General's Chambers, will be brought into effect as soon as it is approved by the House of Assembly, hopefully early in 2017. First, the Boundaries Commission will have to be established, and new electoral boundaries put in place.

The next general elections, presently scheduled for the year 2020, at the expiration of the present House of Assembly, will then be held under the new Elections Act. If the new Constitution has been brought into effect prior to 2020 some consequential amendments will need to be made to the new Elections Act, eg, to reflect that the new qualification to be on the Voters' List is 'ordinary residence', and that 'mere residence' will no longer suffice.

The important new features proposed include the following ones.

1. **Reorganise the Central Electoral Office** (sections 3-16). The Central Electoral Office needs to be completely reorganised to make its performance more professional and clearly independent.
2. **A new enumeration year** (sections 19-25). It is proposed the new enumeration year will be the year 2017, and that a new enumeration year occur approximately

every 10 years following the taking of the census. It is generally agreed that there is a need to clean up the Voters List to remove any persons who may be wrongfully on the List. As it is practically impossible in the absence of death to remove a person from the Voters List once he is on it, even if he has moved away from Anguilla for many years, periodic enumerations will be necessary to ensure the List is kept relevant.

3. **Continuous registration** (section 26). Thereafter, there will be continuing registration.
4. **Applicants must appear in person** (section 32). Once the enumeration process is over, wherever the Supervisor of Elections considers it necessary, he may require any applicant for registration on the Voters List to appear in person before him and to prove that he is qualified to be registered.
5. **Appeals to the Judge** (section 37). Objections to registration must be heard by a qualified person such as the Supervisor, who will ensure the law and the rules of natural justice are followed. Appeals will lie to the High Court Judge as is normal in our region. The Magistrate was given this duty many years ago when there was no judge assigned to Anguilla.
6. **Voter registration cards** (section 42). There is a need to speed up the process on polling day, and it is believed that identification cards will help this process.
7. **Fixed date elections** (section 43). It is generally agreed that the present process whereby the Chief Minister has the sole say in choosing the date for elections is wrong. Elections will be due on the first Monday after the fifth anniversary of the previous general election.
8. **Advance polls** (section 68). Arrangements will be made for election officers and members of essential services to vote a few days in advance of polling day.
9. **Sale of liquor** (section 84). Holders of hotel licences and restaurant licences will not be affected by the provision prohibiting sale of alcohol by persons holding

Liquor Licences. This will return Anguilla to the previous situation where, as in other Leeward Islands, only rum shops and similar institutions were obliged to close on election day.

10. **Removal of posters and billboards** (section 87(5)). All election material must be removed by midnight of the day before polling day, or candidates will face severe penalties.
11. **New district boundaries** (section 98). An Electoral District Boundaries Commission will be established to work with the Statistics Department and the Surveys Department and such others as they determine useful to provide advice and to divide the island up into more or less equal constituencies. It is anticipated this exercise will occur every ten years.
12. **Thirteen elected members instead of seven** (section 99). We do not need to wait for a new Constitution to start increasing the size of the House of Assembly. This is essential if we are to have a proper debate on matters before the House. It is proposed there should be nine district representatives and four members at large. The House will be increased from seven to thirteen elected representatives once elections are held under the new Elections Act.
13. **Campaign financing** (section 105). Political parties must keep a strict account of all donations and contributions, whether of cash or in kind, and whether made to the party or directly to the candidates, and whether made before, during or after an election. The accounts must be audited and filed within six months after the general election, otherwise the party and its candidates will face stiff penalties.

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**A BILL FOR AN ELECTIONS ACT<sup>185</sup>**

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2. Interpretation.

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**CENTRAL ELECTORAL OFFICE**

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4. Supervisor of Elections.
5. Duties of the Supervisor of Elections.
6. Appointment of Registration Officers, etc.
7. Registration Officers' duties.
8. Returning Officers.
9. Oaths.
10. Funds of the Central Electoral Office.
11. Accounts and audit.
12. Appointment of staff.
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14. Shared staff, services, etc.
15. Protection of Central Electoral Office from legal proceedings.
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20. Duties of enumerators.
21. Power of enumerators.
22. Duties of Supervisor of Elections in relation to enumeration.
23. Scrutineers
24. Registration procedures.
25. Preparation of preliminary lists and registers in enumeration year.

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<sup>185</sup> This draft Bill is based on the current British Virgin Islands Elections Act, but retains a number of features of the Anguilla Elections Act. The Regulations and the Forms are mainly Anguillian.



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First Schedule            Local Electoral Districts

Second Schedule        Election Registration Regulations

Third Schedule          Forms

Fourth Schedule        Election Petition Rules

An Act to regulate and control the holding of elections within Anguilla, to declare the boundaries of electoral districts, and for purposes connected therewith and incidental thereto.

[ Gazetted ..... ]

ENACTED by the House of Assembly of Anguilla as follows -

**PART I**  
**PRELIMINARY**

**Short title and commencement**

1. This Act may be cited as the Elections Act and shall come into operation on such date as the Governor, by proclamation published in the Gazette, shall appoint.

**Interpretation**

2. (1) In this Act, unless the context otherwise requires –

"Assembly" means the House of Assembly of Anguilla established under Part IV of the Constitution;

"Central Electoral Office" means the office described in section 3;<sup>186</sup>

"Constitution" means the Anguilla Constitution, 1982;

"elderly person" means a person of seventy years of age or older;

"election" includes an election for a member to represent a local electoral district and an election for four members to represent the Island-wide electoral district;

"election documents" means the documents referred to in section 76 (1);

"election officer" means a returning officer, every presiding officer, poll clerk or other person having any duty to perform under this Act, or to whom the Supervisor of Elections delegates any function, to the faithful performance of which duty he is sworn;

"electoral district" includes both a local electoral district and the Island-wide electoral district;

"form" means the forms specified in the Third Schedule;<sup>187</sup>

"Island-wide electoral district" means the single electoral district comprising Anguilla which returns four members to the Assembly;

"local electoral district" means one of the nine electoral districts defined in the First Schedule each of which returns one member to the Assembly;

"political party" means any party members of which contest an election;

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<sup>186</sup> We have attempted to cross-reference the section numbers as accurately as we can, but some anomalies may remain. We respectfully depend on the legal draftspersons in the A-G's Department to ensure all is perfect

<sup>187</sup> Some of the forms in this draft may not be correctly cross-referenced to the relevant sections, due to the addition of some new forms, and the deletion of others. This exercise should await the finalisation of the draft Bill in order to avoid unnecessary duplication of the work.

"poll book" means the book in Form 48 in which the name and other particulars of every person applying to vote are consecutively entered by the poll clerk as soon as the applicant's right to vote at the polling station has been ascertained and before any such applicant is allowed to vote;

"polling day" means the day fixed for holding the poll at an election;

"polling division" means any polling division constituted in accordance with section 17;

"polling station" means any room or rooms secured by the returning officer for the taking of the votes on polling day;

"preliminary list" means the list of voters mentioned in section 30;

"provisional list" means the list of voters prepared pursuant to section 20;

"qualifying date", in relation to determining the qualification of any person to be registered as a voter, means,

(a) in the case of the enumeration year, 31 December 2017; and

(b) in any other year, the last day of March, June, September and December;

"the Regulations" means the Election Registration Regulations found at the Second Schedule as amended from time to time;

"rejected ballot paper" means a ballot paper which has been handed by the presiding officer to a voter to cast his vote but which at the close of the poll has been found in the ballot box unmarked or so improperly marked that, in the opinion of the returning officer, it cannot be counted;

"returning officer" means, in relation to an electoral district, the officer appointed by the Governor in that behalf under section 8;

"spoiled ballot paper" means a ballot paper which, on polling day, has not been deposited in the ballot box but has been found by the presiding officer to be soiled or improperly printed, or has been handed by the presiding officer to a voter to cast his vote, and,

(a) has been spoiled in marking by the voter; and

(b) has been handed back to the presiding officer and exchanged for another;

"Supervisor of Elections" means the officer appointed under section 4;

"voter" means any person who votes or is entitled to vote at an election;

"writ" means the writ for an election.

(2) Where in this Act,

(a) any notice, list or any other instrument is required to be "published", then, unless the contrary intention appears in any section, the publication thereof shall be made by placing the same on the website of the Electoral Office or any publicly accessed

website of the Government of Anguilla, and by posting the same on the door of any Court House, Church, Chapel, Schoolhouse or other building in Anguilla which in the opinion of the Supervisor of Elections will give publicity to such instrument. In places where there is no such building as aforesaid, such instrument may be attached to a board and fastened up in a conspicuous place; and

- (b) any paper, list or report is required to be printed under the provisions of this Act, such paper, list or report may, instead of being so printed, be represented or reproduced by means of a digital screen, a typewriter, roneo, cyclostyle, photocopier or other similar apparatus or by any other method by which words, figures or signs may be represented or reproduced in visible form whether analogue or digital.<sup>188</sup>

(3) Where in this Act reference is made to any officer by the term designating his office, such reference shall be construed as a reference to the officer for the time being lawfully discharging the function of that office.

## **PART II**

### **CENTRAL ELECTORAL OFFICE<sup>189</sup>**

#### **3. Central Electoral Office**

After the coming into effect of this Act, the Governor in Council shall set up an electoral office in The Valley, which shall be known as the Central Electoral Office and which shall be under the direction of the Supervisor of Elections.

#### **Supervisor of Elections**

- 4. (1) The Supervisor of Elections shall be a Belonger of Anguilla, as defined in section 80(2) of the Constitution, who shall,
  - (a) be ordinarily resident in Anguilla;
  - (b) be a registered voter; and
  - (c) be in possession of,
    - (i) the necessary qualifications to practise in Anguilla as a barrister or a solicitor with at least one year administrative or supervisory experience respecting elections; or
    - (ii) an undergraduate degree with at least two years administrative or supervisory experience respecting elections; or
    - (iii) at least five years administrative or supervisory experience respecting elections.

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<sup>188</sup> This wording adds digital reproduction to the more traditional methods.

<sup>189</sup> Introduced in accordance with Recommendation 1 of the 2015 Election Observer Mission Report and with wording taken from the Montserrat Electoral Commission Act.

(2) The Governor shall, by instrument under his hand, appoint the Supervisor of Elections and such other officers as are required to enable the Supervisor of Elections to carry out his functions under this Act or the Regulations.

### **Duties of the Supervisor of Elections**

5. (1) The Supervisor of Elections shall act impartially and independently of any political or governmental influence.<sup>190</sup>

(2) In addition to any other duties set out in this or any other Act, the duties of the Supervisor of Elections shall be,

- (a) to exercise general direction and supervision over the registration of voters and the administrative conduct of elections and enforce on the part of all election officers fairness, impartiality and compliance with the provisions of this Act and the Regulations;
- (b) to develop and design training programmes for persons appointed to be election officers, including such programmes as shall ensure that the functions of officers are carried out in an independent and impartial manner;
- (c) design a continuous non-partisan voter education programme for voters;
- (d) regulate the conduct of election officers, issuing to them such instructions as from time to time he may deem necessary to ensure effective execution of the provisions of this Act and the Regulations;
- (e) to publish at least once in every three months a notice in the Gazette, and on the Electoral Office website or in default on any publicly accessible government of Anguilla website and in such other manner as he may deem fit, requiring any person who is qualified as a voter under section 43 of the Constitution to make an application for such registration in the appropriate form;
- (f) shall prepare and furnish to the Governor,
  - (i) as soon as practicable after 30 March in each year, a report on the operations of the Central Electoral Office during the year that ended on 31 December; and
  - (ii) a copy of the statement of accounts required under section 7 and the Auditor's Report on that statement of accounts.
- (g) to execute and perform all other powers and duties which by this Act and the Regulations are conferred and imposed upon him.

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<sup>190</sup> This BVI section has been reworked to include most to the provisions of the Montserrat Electoral Commission Act, applying the characteristics of the Montserrat Commission to the Anguilla Supervisor of Elections.

(3) The Governor shall cause the reports to be laid before the House of Assembly within a period of three months after their receipt; and thereafter to be made available to the public on one or more government websites.

(4) The Supervisor of Elections may, from time to time, delegate in writing any of the functions, duties or powers conferred upon him by this Act and the Regulations to an election officer, subject to such conditions as he thinks fit.

#### **Appointment of Registration Officers, etc.<sup>191</sup>**

6. (1) The Governor may on the recommendation of the Supervisor of Elections appoint a Registration Officer for each electoral district.

(2) The Supervisor of Elections may appoint assistant Registration Officers.

(3) The same person may be appointed as Registration Officer or as assistant Registration Officer for more than one electoral district.

(4) A Registration Officer shall have such powers and be charged with such duties as hereinafter appear.

(5) Subject to the authority, direction and control of the Registration Officer, an assistant Registration Officer has all the powers and may perform any of the duties of the Registration Officer under this Act, other than the consideration of claims and objections.

(6) Every Registration Officer shall, before entering on his duties as such, take and subscribe an oath in Form 35 and shall transmit the oath or affirmation to the Supervisor of Elections.

#### **Registration Officers' duties<sup>192</sup>**

7. The Registration Officer of each electoral district shall compile the register of voters for his electoral district in accordance with this Act and the regulations.

#### **Returning officers**

8. (1) The Governor may on the recommendation of the Supervisor of Elections appoint a fit and proper person who is registered to vote in Anguilla to assist the Supervisor of Elections as the returning officer for each electoral district.

(2) The Governor may at any time revoke any appointment made by him under this section and make another appointment in place thereof.

(3) Forthwith upon his appointment each returning officer shall take and subscribe an oath in Form 34 and shall transmit such oath to the Supervisor of Elections.

(4) Notwithstanding anything contained in this Act, the Supervisor of Elections may perform the duties of a returning officer if the need arises.

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<sup>191</sup> Taken from the Anguilla Elections Act.

<sup>192</sup> Taken from the Anguilla Elections Act.



## **Oaths**

9. (1) Every election officer and every person who is required by Parts II to V of this Act to take any oath may take such oath before a Magistrate, a Justice of the Peace, the Supervisor of Elections or before any returning officer or presiding officer or poll clerk appointed in accordance with the provisions of this Act, each of whom is hereby authorised and empowered to administer any oath required by Parts II to V to be taken by any election officer or other person.

(2) Every person who is required to take an oath in pursuance of any of the provisions of Parts II to V may elect to make a solemn affirmation instead of taking such oath.

## **Funds of the Central Electoral Office**

10. The funds of the Central Electoral Office shall consist of monies that are appropriated to it by the House of Assembly for the purposes of this Act and the Regulations;

## **Accounts and audit**

11. (1) The Supervisor of Elections shall cause proper accounts of all financial transactions of the Central Electoral Office to be kept in a form as the Accountant General may direct.

(2) The Supervisor of Elections shall, within three months after the end of each financial year, prepare a statement of the accounts of the Central Electoral Office.

(3) The accounts required to be kept under subsection (1) and the statement of accounts required under subsection (2) shall be audited, as soon as practicable and in any case within four months after the end of each financial year, by the Chief Auditor.

## **Appointment of staff**

12. (1) The Central Electoral Office shall be provided with such staff as the Governor, after consultation with the Supervisor of Elections, considers necessary for the efficient administration of this Act and the Regulations.

(2) The administrative expenses of the Central Electoral Office, including salaries and allowances payable to persons serving with the Central Electoral Office, shall be charged to the Consolidated Fund.

(3) The Supervisor of Elections shall prepare the estimate proposals for the Central Electoral Office and submit them to the Governor who shall seek the approval of the House of Assembly of the budget as proposed by the Supervisor of Elections

## **Premises and supplies**

13. Within the funds allocated under section 10, the Central Electoral Office may lease premises and acquire equipment and supplies as are necessary for its efficient operation.

**Shared staff, services etc.**

14. Notwithstanding any provision of this Act, the Central Electoral Office may share staff, services, equipment and supplies with any other Government entity.

**Protection of Central Electoral Office from legal proceedings**

15. (1) No officer shall be personally liable for any act or default of the Central Electoral Office done or omitted to be done in good faith in the course of its operation.

(2) Where any officer is exempt from liability by reason only of the provisions of this section the Central Electoral Office shall be liable to the extent that it would be if the said member were its servant or agent.

**Public education during election campaign**

16. The Central Electoral Office shall ensure continuous public education on the electoral process.

**PART III**

**ELECTORAL DISTRICTS**

**Polling divisions**

17. (1) Anguilla shall be divided into the 9 local electoral districts described in the First Schedule and one Island-wide electoral district.

(2) Each local electoral district shall be a polling division.

(3) Notwithstanding the provisions of subsections (1) and (2), the Supervisor of Elections may divide any local electoral district into so many polling divisions and with such boundaries and descriptions as he may by notice in the Gazette, appoint.

(4) The Supervisor of Elections may in like manner from time to time vary the number, descriptions and boundaries of any polling division so appointed.

(5) In determining the boundaries of any polling division, the Supervisor of Elections shall have regard to geographical considerations and such other factors as may affect the facility of communication between various places within the polling division.

(6) The polling divisions of the Island-wide electoral district shall be the same as those prescribed and appointed for local electoral districts.

**Requirement for registration<sup>193</sup>**

18. Every person who is qualified to be registered as a voter shall, unless registered in the register of voters for an electoral district,

(a) apply to the Registration Officer for that electoral district, during the enumeration year; or

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<sup>193</sup> Taken from the Anguilla Elections Act.

(b) apply to the Electoral Registration Officer, after the enumeration year; to be registered as a voter in accordance with this Act and the regulations.

## **PART IV**

### **REGISTRATION OF VOTERS IN AN ENUMERATION YEAR**

#### **Appointment of enumerators**

**19.** (1) Within 30 days after the approval of the Proclamation by the House of Assembly under section 1, the Governor shall,<sup>194</sup> on the recommendation of the Supervisor of Elections, appoint for each local electoral district or for each polling division in an electoral district as the circumstances may require, fit and proper persons who are registered to vote in Anguilla to be enumerators to register voters in the polling division named in the instrument of appointment for the purpose of maintaining and updating a provisional list of voters to be used by the Supervisor of Elections in the compilation of the preliminary list.

(2) Forthwith upon his appointment, an enumerator shall take and subscribe the oath in accordance with the Regulations and shall transmit the oath to the Supervisor of Elections.

(3) Within 12 months after the holding of any island-wide census the Governor shall by Proclamation approved by the House of Assembly declare a new enumeration year and proceed as in subsection (1).

#### **Duties of enumerators**

**20.** An enumerator shall,

- (a) commencing on such day as the Governor may, by notice in the Gazette, appoint, (hereinafter referred to as the "commencement day") proceed to ascertain the name, address and occupation of every person qualified to vote in the polling division named in his instrument of appointment;
- (b) obtain the information he may require by a house to house enquiry;
- (c) prepare a list of the names, addresses and occupations of all voters who are included in the enumeration, with the surnames in alphabetical order, and where more than one person has the same surname, with the names arranged in alphabetical order of their other names, and with each name followed by the address and occupation of the person and particulars of the documentary evidence, if any, examined by the enumerator to determine eligibility for registration;
- (d) exercise the utmost care in preparing the provisional list and take all necessary precautions to ensure that the list, when completed, contains the required list of particulars of every qualified voter in the polling division and that it does not contain the name of any person not so qualified;

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<sup>194</sup> It is proposed by this provision that the new elections procedure, with 13 representatives, will be implemented during the year 2017 prior to the coming into effect of any new Constitution.

- (e) place his signature at the end of the provisional list; and
- (f) within a period of twenty-one days from the commencement day or such longer period as the Governor may, after consultation with the Supervisor of Elections, determine, submit the provisional list to the Supervisor of Elections.

### **Powers of enumerators**

**21.** An enumerator may, if he thinks it necessary, request any person to produce for examination that person's birth certificate, passport or other documentary proof of qualification as a voter and may omit from the provisional list the name of any person who fails to comply with his request.

### **Duties of Supervisor of Elections in relation to enumeration**

**22.** Within ten days after the time limited for the receipt of the provisional list, the Supervisor of Elections shall cause the provisional list to be open to the inspection of the public free of charge during the hours of 9:00 a.m. to 3:30 p.m. in each day for a period of ten days at the General Post Office in The Valley and at such other places in the electoral districts as the Governor may direct, provided that copies shall be made available to any person upon request and upon payment of a reasonable administrative fee, and thereafter the Supervisor of Elections shall take claims for correction and proceed to decide claims in accordance with the Regulations.

### **Scrutineers<sup>195</sup>**

**23.** (1) In the enumeration year each political party is entitled to nominate in accordance with the regulations one person who is qualified as a voter for appointment as scrutineer in respect of each Polling Division.

(2) If on the day appointed for the commencement of the preparation of the preliminary list for an electoral district,

(a) no qualified person has been nominated as scrutineer in respect of that electoral district; or

(b) where the electoral district comprises more than one Polling Division, in respect of any Polling Division;

the Supervisor of Elections may nominate not more than 2 persons qualified as voters for appointment as scrutineers in respect of that electoral district or that Polling Division, as the case may be.

(3) A qualified person who is duly nominated for appointment as a scrutineer shall be appointed as scrutineer under the regulations.

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<sup>195</sup> Taken from the Anguilla Elections Act.

### **Registration procedures**

24. On or after the day fixed for the commencement of registration of voters, every person eligible for registration as a voter may make an application for registration in accordance with the Regulations.

### **Preparation of preliminary lists and registers in enumeration year**

25. Within 30 days after the appointment of enumerators in accordance with section 14, the Supervisor of Elections shall cause to be prepared for each electoral district in accordance with section 30 a preliminary list of all persons qualified to be registered as voters in that electoral district and those lists, when revised and published in accordance with section 34, shall, subject to the provisions of this Act and the Regulations, constitute the register of voters for the electoral district.

## **PART V**

### **REGISTRATION OF VOTERS AFTER ENUMERATION YEAR**

#### **Continuous registration**

26. After the enumeration year and until another enumeration year is appointed,

- (a) there shall be continuous registration of all persons qualified to be registered as voters under this Act; and
- (b) when a person is qualified or will be qualified on the next qualifying date to be registered as a voter in an electoral district, that person may apply to the Supervisor of Elections to be registered as a voter in that electoral district in accordance with this Act.

#### **Registration of voters**

27. A person who is qualified to be registered as a voter under section 43 (1) of the Constitution and who wishes to be registered shall apply in person to the Supervisor of Elections to have his name entered in the preliminary list of the local electoral district in which such person resides in accordance with the Regulations.

#### **Quarterly lists**

28. After the enumeration year, the Supervisor of Elections shall, not later than the 40th day of every quarter in every succeeding year, prepare a quarterly list of voters for every electoral district in accordance with the Regulations.

#### **Preparation of registers after enumeration year**

29. After the enumeration year, the register of voters for every electoral district shall be prepared in accordance with this section and the Regulations.

#### **Compiling list of voters**

30. The Supervisor of Elections shall prepare or cause to be prepared a list (hereinafter referred to as the "preliminary list") in accordance with the Act and the Regulations.

### **Householders and others to give information to Supervisor of Elections**

**31.** (1) The Supervisor of Elections may require any householder or person owning or occupying any premises to give the information required for the purpose of preparing the preliminary list.

(2) Without prejudice to the generality of subsection (1), the Supervisor of Elections may require any householder or person owning or occupying any premises to complete and return to him within fourteen days of its receipt by him an application for registration in accordance with the Regulations.

### **Supervisor of Elections may require attendance of persons**

**32.** (1) The Supervisor of Elections, before entering the name of any person in a preliminary list, may, if he thinks it necessary, require such a person to appear before him and produce his birth certificate, passport or other documents and make and sign a declaration showing the qualifications for his name to be included in a preliminary list.

(2) The Supervisor of Elections may omit from a preliminary list the name of any person who has been required under subsection (1) to appear before him or to produce his birth certificate, passport or other documents or to make or sign a declaration and who fails to do so within one month of having been so required.

### **Transfer of registration**

**33.** A registered voter who moves his place of residence from within one local electoral district or polling division to another, may have his name transferred to the list of voters for the local electoral district or polling division to which he has moved, if he applies in Form 36 and establishes, to the satisfaction of the Supervisor of Elections, proof of residence within the local electoral district or polling division to which he has moved.

### **Preliminary list**

**34.** The Supervisor of Elections shall write down or cause to be written in the manner specified in the Regulations in the preliminary list, the names of all persons residing in the local electoral district or polling division, as the case may be, who are entitled to be registered as voters and shall sign, date and publish it in accordance with the Regulations.

### **Procedure as to omissions and objections**

**35.** All claims for registration or for correction of any error or of objection shall be made in accordance with the Regulations.

### **Hearing of claims and objections**

**36.** Where any claim or objection is made under section 35, it shall be considered and determined by the Supervisor of Elections in accordance with the Regulations.

## Appeal

37. (1) An appeal lies to a Judge of the High Court from any decision of the Supervisor of Elections on any claim or objection that has been considered by him under this Act or the Regulations, but no appeal lies where a claimant or objector has not availed himself of the opportunity provided under the Regulations of being heard by the Supervisor of Elections on the claim or objection.

(2) Any claimant or objector desiring to appeal against the decision of the Supervisor of Elections shall give written notice of appeal to Supervisor of Elections and to the opposite party, if any, not later than 7 days after the decision, specifying the grounds of appeal.

(3) The Supervisor of Elections shall,

(a) immediately forward,

(i) the notice to the Registrar of the High Court,

(ii) a statement of the material facts that, in his opinion, have been established in the case, and

(iii) his decision on the whole case and on any point that may be specified as a ground of appeal; and

(b) furnish to the Judge of the High Court any further information that the Judge may require and that the Supervisor of Elections is able to furnish.

(4) When it appears to the Supervisor of Elections that any notices of appeal given to him are based on similar grounds, he shall inform the Registrar of the High Court of that fact for the purpose of enabling the Judge, if he thinks fit, to consolidate the appeals or to select a case as a test case.

(5) On any appeal under this section, the Supervisor of Elections shall be a party to the proceedings.

(6) Every appeal under this section shall be prosecuted, heard and determined by the High Court in the manner prescribed by rules of the High Court, and the costs of the appeal are in the discretion of the Judge.

(7) The right of a person whose name is for the time being on the list of voters to vote at an election shall not be prejudiced by an appeal that is pending under this section and any vote given at an election in pursuance of that right shall be as good as if no appeal were pending and shall not be affected by the subsequent decision of the appeal.

(8) Notice shall be sent to the Supervisor of Elections by the Registrar of the Supreme Court of the decision of the Judge on any appeal under this section, and the Supervisor of Elections shall make any alteration in the list of voters that may be required to give effect to the decision.

(9) A decision of the High Court given under this section is final.

### **Rules of High Court**

**38.** The Chief Justice may by regulation amend or replace the rules at the Fourth Schedule of this Act.

#### **Corrections to the preliminary list**

- 39.** The Supervisor of Elections shall make alterations to the preliminary list,
- (a) to carry out a decision with respect to any claim or objection;
  - (b) to correct any clerical error;
  - (c) to correct any misnomer or inaccurate description;
  - (d) to delete the name of any person who the Supervisor of Elections is satisfied,
    - (i) is not qualified to be registered as a voter under section 43 (1) of the Constitution; or
    - (ii) is subject to a disqualification as specified in section 43 (2) of the Constitution;
    - (iii) is dead; or
    - (iv) to carry out any other corrections he considers necessary.

#### **Other corrections to the preliminary list**

**40.** Where at any time before the issue of a writ under section 45, it appears to the Supervisor of Elections, that it is necessary to make any alteration to the preliminary list, other than an alteration made as a result of a claim or objection to the preliminary list, he shall forthwith send to the person affected by the alteration a notice stating the nature of the proposed alteration and shall give him an opportunity of objecting to the alteration and, if necessary, of appearing and being heard in accordance with section 32, and the Supervisor of Elections may thereafter make such alteration, as seems to him to be necessary.

#### **Revised preliminary list to be certified and deemed Register of Voters**

**41.** (1) On completion of the revision of the preliminary list for each local electoral district or polling division, as the case may be, the Supervisor of Elections shall prepare and publish not later than the 72nd day of every quarter of every succeeding year a preliminary list of voters for every electoral district in accordance with this section or in the case of an election other than a general election not later than three days after the issue of a writ for election, by a notification in the Gazette and in such other manner as he may deem fit and by making such copies available at such places as he may select for public inspection until the coming into force of the next Register of Voters.

(2) The copies published under subsection (1) shall be deemed to be the Registers of Voters for the local electoral district to which they refer and shall be used for a general election of members of the Assembly and for any other election to fill a vacancy in the seat of the member of the Assembly representing the relevant district.



(3) The current Register of Voters for all local electoral districts shall constitute the Register of Voters for the Island-wide electoral district and shall be used for all elections for members of the Assembly to represent that district.

(4) If, as the result of an appeal from a decision of the Supervisor of Elections or the death of a person or for other sufficient cause, the insertion of any name in the Register of Voters or the deletion of any name therefrom shall be necessary, such insertion or deletion shall be made by the Supervisor of Elections who shall number any name inserted with the same number as the preceding name followed by a letter or letters.

#### **Voters' Database and voter registration cards**

**42.** (1) The Supervisor of Elections shall establish, maintain and update an electronic database (hereinafter referred to as "the Voters' Database") in which shall be entered, in separate sections thereof,

- (a) the name of each person listed in any current Register of Voters for a local electoral district;
- (b) the name of each person whose application to have his name entered in a preliminary list is refused on the grounds that,
  - (i) he is not qualified to be registered as a voter under section 43 of the Constitution; or
  - (ii) he is subject to a disqualification as specified in section 44 of the Constitution;
- (c) the name of each person whose name has, in accordance with this Act, been deleted from any preliminary list or Register of Voters; and
- (d) an image or photograph of the person on the Register of Voters.

and such other information as the Supervisor of Elections may determine for the purpose of ascertaining the identity of each such person.

(2) Each person whose name is entered on the Voters' Database shall be assigned an identification number.

(3) For the purpose of any election or any referendum under any Referendum Act, (in this Act referred to as "a referendum"), the Supervisor of Elections shall cause to be issued to each person whose name is listed in any current Register of Voters, a voter registration card<sup>196</sup> in Form 37 or containing such other information as the Supervisor of Elections may determine for the purpose of,

- (a) ascertaining the identity of each such person;
- (b) registering the fact that such person is entitled to vote at an election or referendum; or

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<sup>196</sup> In accordance with Recommendation 4 of the 2015 Election Observer Mission Report and taken from the BVI Elections Act.

(c) registering the fact that such person has voted at an election or referendum.

(4) The Governor shall, by Order published in the *Gazette*, authorise the varying by the Supervisor of Elections of the contents of voter registration cards issued under subsection (3), subject to such terms and conditions as may be specified in the Order

(5) Without prejudice to the generality of subsection (3), information on a voter registration card shall include a photograph of the person to whom it is issued and may include information stored on a magnetic strip, bar code or other device.

(6) The Supervisor of Elections shall take all reasonable steps to ensure the Voters' Database is designed in such a way as to prevent a person from determining,

(a) the candidate for whom a person voted;

(b) the party affiliation of a person; and

(c) in the case of a referendum, the manner in which a person voted.

(7) Where, upon an application in Form 38, the Supervisor of Elections is satisfied as regards the loss, mutilation, destruction or defacing of a voter registration card, he shall upon payment of any reasonable administrative fee issue the applicant with a duplicate voter registration card which shall be valid and treated as if it were the original voter registration card.

(8) For the purpose of security, an electronic backup copy of the Voters' Database shall be kept at a secure location designated by the Governor outside the premises of the Elections Office.

(9) No person shall be prevented from voting in any election or referendum by reason only of the fact that he is not in possession of a voter registration card issued or authorised for the purposes of that election or referendum, provided that the person produces other identification considered by the Supervisor of Elections as sufficient proof of his entitlement to vote.

(10) In any case where information in a Register of Voters conflicts with information in the Voters' Database, the Register of Voters shall prevail.

(11) An election officer who makes an entry in the Voters' Database which he knows or has reasonable cause to believe to be false, or which he does not believe to be true, commits an offence and is liable on conviction on indictment, to a fine of \$19,200 or imprisonment for two years.

(12) An election officer who issues a voter registration card, or causes a voter registration card to be issued, to a person whom he knows, or has reasonable cause to believe, is not entitled to be the holder of that voter registration card, commits an offence and is liable on conviction on indictment, to a fine of \$19,200 or imprisonment for two years.

(13) A person who, with intent to deceive, forges a voter registration card, commits an offence and is liable on conviction on indictment, to a fine of \$19,200 or imprisonment for two years.

(14) A person who knowingly, with intent to deceive, uses any forged voter registration card for the purposes of enabling him to vote in an election or referendum, commits an offence and is liable on conviction on indictment, to a fine of \$19,200 or imprisonment for two years.”

## **PART VI**

### **ARRANGEMENTS FOR ELECTIONS**

#### **Fixed date for general elections**

**43.** (1) Polling day for the next general election after the passing of this Act will be the first Monday after the 5th anniversary of the last general election.<sup>197</sup>

(2) The polling day for each subsequent general election is to be the first Monday after the 5th anniversary of the previous general election.

(3) The Governor acting on the advice of the Chief Minister may by order made by statutory instrument provide that the polling day for a general election in a specified calendar year is to be later than the day determined under subsections (1) or (2), but not more than two months later.

(4) A statutory instrument containing an order under subsection (3) shall not be made unless a draft has been laid before and approved by a resolution of the House of Assembly.

(5) The draft laid before the House of Assembly containing an order under subsection (3) must be accompanied by a statement setting out the Chief Minister's reasons for proposing the change in the polling day.

#### **Early general elections**

**44.** (1) An early general election is to take place if the House of Assembly passes a motion of no confidence in the government.

(2) If a general election is to take place as provided for by subsection (1), the polling day for the election will be the day appointed by the Governor being not later than two months after the date of the passage of the motion.

#### **Issue of writs for holding elections**

**45.** (1) For the purpose of every general election of members of the Assembly, and for the purpose of the election of members to vacancies in such membership, the Governor shall issue writs under the Public Seal of Anguilla addressed to the returning officers of the respective electoral districts for which members are to be returned. Such writs shall be forwarded to the Supervisor of Elections for transmission to the several returning officers.

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<sup>197</sup> This provision reflects the proposed constitutional provision for fixed dates for general elections, strongly favoured by the public during the consultations over the draft new Constitution. The wording is taken from the UK Act.

(2) Every writ shall be in Form 39 and shall specify the day and place of nomination of candidates, the day on which, if it is necessary, the poll shall be taken (being not less than fourteen days after the day of such nomination), and the day on which such writ shall be returnable to the Governor. A writ for an election in the Island-wide electoral district shall specify the number of members to be elected in that district.

(3) Upon receipt of such writ, every returning officer shall proceed to hold the election in the manner hereinafter provided.

### **Nomination**

**46.** (1) On receiving such writ, every returning officer shall publish a notice in Form 40 of the day and place fixed for the nomination of candidates.

(2) Such notice shall be published at least seven clear days before the day fixed for such nomination.

(3) Nomination papers shall be provided by the returning officer and shall be in Form 41.

(4) On the day and at the place so fixed for the nomination of candidates every returning officer shall attend between the hours of 10:00 a.m. and 1:00 p.m. and between the hours of 2:00 p.m. and 4:00 p.m. and receive the nomination papers; and each candidate so nominated shall present to the returning officer a receipt issued pursuant to section 48.

(5) Every candidate for election shall be nominated on one nomination paper by at least two registered voters of the electoral district for which such candidate seeks election and his consent to nomination shall be given on such nomination paper and attested by one witness; and such candidate shall swear the affidavit at the foot of Form 41 that he is, to the best of his knowledge, not disqualified under the provisions of the Constitution from contesting and being elected as a member of the Assembly:

Provided that no candidate shall be deemed not to have been validly nominated by reason only of the fact that, subsequent to nomination day, any person by whom his nomination paper was signed is struck off the Register of Voters for the relevant electoral district.

(6) If at four o'clock on the day fixed for nomination,

(a) in a local electoral district, only one candidate has been nominated for the seat to be filled, the returning officer shall declare the candidate elected;

(b) in the Island-wide electoral district, the number of candidates nominated equals or is less than the number of seats to be filled, the returning officer shall declare those candidates elected;

and the returning officer shall immediately certify by endorsement on the writ in accordance with the Regulations the return of such candidate or candidates and shall return the writ so endorsed to the Supervisor of Elections for transmission to

the Governor within the time specified for that purpose in the writ. Where the numbers of candidates so elected in the Island-wide electoral district is less than the number of seats to be filled, the returning officer shall, after communication with the Supervisor of Elections, adjourn the election of the remainder.

(7) Any candidate duly nominated may, not less than three clear days before the day fixed for taking the poll, withdraw from his candidature by giving notice to that effect, signed by him, to the returning officer, provided that on such withdrawal there remain,

- (a) in an election in a local electoral district, no fewer than one duly nominated candidate;
- (b) in an election in the Island-wide electoral district, no fewer candidates than the number of seats to be filled in that election.

(8) Subject to subsection (9), where a candidate has withdrawn after the ballots are printed, the returning officer shall advise each presiding officer of his electoral district of the withdrawal and, when time permits, shall distribute to each presiding officer a printed notice of the withdrawal. On polling day each presiding officer shall post up a copy of the printed notice of withdrawal in a conspicuous place in his polling station. If time does not permit of the printing and distribution of such notice, the presiding officer, upon being advised by the returning officer of the withdrawal of any candidate, shall himself prepare by hand a notice to that effect and post it up in a conspicuous place in his polling station. In either case, the presiding officer shall, when delivering a ballot to a voter, inform the voter of the withdrawal of the candidate.

(9) If, after a withdrawal,

- (a) in a local electoral district, there remains only one candidate;
- (b) in the Island-wide electoral district, there remain no more candidates than the number of seats to be filled at the election,

the returning officer shall return as duly elected the candidate or candidates so remaining without waiting for the day fixed for the taking of the poll.

(10) Whenever before the closing of the poll, the returning officer becomes aware that any candidate has died since the close of nomination, he shall, after consulting the Supervisor of Elections, adjourn the election in that electoral district.

(11) Whenever,

- (a) the election in an electoral district is adjourned on account of the death of a candidate; or
- (b) the election in the Island-wide electoral district is adjourned in the circumstances set out in subsection (6),

the period of adjournment shall not exceed one month and the Governor shall by Proclamation amend the writ already issued to alter the day for the nomination of candidates, the day for the holding of the poll, if a polling day is necessary, and the day on which the name of the elected member or members shall be certified to him.

In the case referred to at paragraph (b), such Proclamation shall also state the number of seats remaining to be filled.

**Symbols**<sup>198</sup>

47. (1) Where candidates from the same political party contest an election the secretary of the party shall file with the Supervisor of Elections a certified joint statement made by such candidates in Form 61.

(2) There shall be printed upon every ballot paper opposite the name of every candidate who has been allocated a symbol the appropriate symbol, being one of the symbols provided for in Form 62.

(3) The same symbol may be allotted to every candidate from the same political party, if so requested by the political party.

(4) Allotment of symbols shall be at the discretion of the Supervisor of Elections, but so far as possible he shall allot to each political party or individual candidate the symbol requested.

**Deposit**

48. (1) A candidate for election, or someone on his behalf, shall deposit at Inland Revenue Department, on or before the day of his nomination, the sum of \$1,000, and, if he fails to do so, the nomination of such candidate shall be deemed to be withdrawn.

(2) The deposit shall be made in legal tender and a receipt therefor shall be given by the Inland Revenue Department.

**When deposit forfeited or returned**

49. (1) If a candidate who has made such deposit is not elected, and the number of votes polled by him,

(a) in an election in a local electoral district does not exceed one-eighth of the total number of votes polled in the election in that district;

(b) in an election in the Island-wide electoral district does not exceed such proportion of the number of votes polled in that election as is determined by the application of the formula:

$$\frac{1}{8 \times \text{the number of seats to be filled at that election}}$$

the amount deposited shall be forfeited to the Crown; in any other case the deposit shall be returned by the Accountant General as soon as practicable after the result of the election is declared, to the candidate, his legal personal representative, or the person by whom the deposit was made, as the case may be.

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<sup>198</sup> Taken from RRA E30-2.

(2) For the purposes of this section, the number of votes polled shall be deemed to be the number of ballot papers (other than rejected ballot papers) counted.

### **Contested elections and power to adjourn poll**

**50.** (1) If,

(a) in a local electoral district there shall be more than one candidate duly nominated;

(b) in the Island-wide electoral district there shall be more candidates nominated than there are seats to be filled,

a poll shall be taken, and in such case the returning officer shall adjourn the election to the day specified in the writ and the poll shall be taken on such day in the manner hereinafter provided.

(2) The returning officer shall, as soon as practicable after adjourning the election, publish a notice in accordance with the Regulations specifying the day and time on which and the locations of the polling stations in the electoral district at which the poll will be taken and of the names of the candidates nominated for election and of the place where and the day and time when the number of votes given to the several candidates for such electoral district will be counted.

(3) Where the proceedings at any polling station are interrupted or obstructed by riot, or open violence, or by the occurrence of any earthquake, hurricane, flood, fire, outbreak of pestilence or outbreak of infectious disease, or other calamity whether similar to the foregoing or not, the presiding officer may adjourn the proceedings until the following day and thereafter from day to day as may be necessary and shall forthwith give notice to the returning officer.

(4) Where the poll is adjourned at any polling station,

(a) the hours of polling on the day to which it is adjourned shall be the same as for the original day; and

(b) references in this Act to the close of the poll shall be construed accordingly.

(5) Where any election is uncontested the returning officer shall execute and deliver a return in Form 42 to the Supervisor of Elections.

### **Polling Stations**

**51.** (1) Subject to subsection (4), on the day named in the notice published under section 46 (2) for the taking of the poll, the returning officer shall cause to be opened in the electoral district to which he is appointed such number of polling stations as the Supervisor of Elections shall determine.

(2) The returning officer shall provide each polling station with such number of compartments as he may consider necessary to enable voters to record their votes screened from observation.

(3) Unless the writ otherwise directs, polling stations shall be opened at 7:00 a.m. and shall be closed at 6:00 p.m.

(4) In a general election, the same polling stations shall be used for the Island-wide electoral district as are used for local electoral districts in which there is a contested election, and the same presiding officer may be appointed at a polling station for the election in the Island-wide electoral district and for the election in the relevant local electoral district.

### **Presiding officers**

**52.** (1) The Supervisor of Elections shall, subject to the approval of the Governor, appoint a presiding officer who is registered to vote in Anguilla to attend at each polling station to receive the votes, but he shall not so appoint any person who has been employed by or on behalf of a candidate in or about the same election. The Supervisor of elections may himself, if he thinks fit, preside at any polling station.

(2) Subject to subsection (1), the Supervisor of Elections may appoint different presiding officers for the local electoral districts and the Island-wide electoral district for the purpose of receiving the votes at a polling station.

(3) Forthwith upon his appointment, every presiding officer shall take and subscribe an oath in Form 43 and shall transmit such oath to the Supervisor of Elections.

### **Poll clerks**

**53.** (1) The Supervisor of Elections shall, subject to the approval of the Governor, appoint one or more poll clerks who are registered voters in Anguilla for every polling station in an electoral district.

(2) Forthwith upon his appointment, every poll clerk shall take and subscribe an oath in accordance with Form 44 and shall transmit such oath to the Supervisor of Elections.

(3) If any presiding officer dies or becomes incapable of performing his duties during the taking of the poll, the poll clerk (or, if more than one, such of them as may be nominated by the returning officer) shall forthwith assume the office of presiding officer and shall appoint some other person to act as poll clerk in his place.

(4) If any poll clerk dies or becomes incapable of performing his duties during the taking of the poll, the presiding officer shall forthwith appoint some other person to act as poll clerk.

(5) Every appointment made under subsection (3) or (4) shall be immediately reported to the Supervisor of Elections by the person making the appointment.

### **Ballot boxes**

**54.** (1) The Supervisor of Elections shall supply to each returning officer a number of ballot boxes equal to the number of polling stations in his electoral district.



(2) Every ballot box shall be made of some durable material with one lock and key and a slit or narrow opening in the top and shall be so constructed that the ballot papers may be introduced therein but cannot be withdrawn therefrom unless the box is unlocked.

(3) In a general election, and on any other occasion when the same polling station is used for an election both for the Island-wide electoral district and for a local electoral district, the same ballot boxes shall be used.

### **Supplies of election material**

**55.** (1) The returning officer shall provide each presiding officer with a ballot box and such number of ballot papers as in the opinion of the returning officer may be necessary.

(2) In a general election, and on any other occasion when the same polling station is used for an election both for the Island-wide electoral district and for a local electoral district, the part of the ballot papers provided for the Island-wide electoral district shall be separated by a perforated line from the part of the ballot papers provided for the local electoral district.

(3) In an election to fill a vacancy in the Island-wide electoral district, the ballot papers provided shall list only the candidates for election to fill the vacancy.

(4) The returning officer shall provide each polling station with,

- (a) a statement showing the number of ballot papers so provided, with the serial numbers on the ballots;
- (b) the necessary materials to enable voters to mark the ballot papers;
- (c) the necessary materials for putting the official mark on the ballot papers;
- (d) at least two copies, which he shall certify of the Register of Voters, hereinafter called "the official list of voters" relating to the local electoral district in which the polling station is situate;
- (e) at least three copies of the directions for the guidance of voters in accordance with Form 45;
- (f) a blank poll book;
- (g) the several forms of oaths to be administered to voters or other persons;
- (h) such other things as may be necessary for conducting the election in the manner provided by this Act.

### **Polling and counting agent**

**56.** (1) Each candidate may, before the commencement of the poll, appoint,

- (a) not more than two polling agents to attend at a polling station, but only one of those polling agents shall remain in the polling station at any given time, provided that this shall not be construed as preventing a

polling agent from handing over his duties to another polling agent in the polling station within such period and in such manner as may be directed by the Supervisor of Elections; and

(b) not more than two counting agents to attend at the counting of the votes.

(2) An agent may be appointed on behalf of more than one candidate.

(3) Every appointment of an agent shall be in writing and shall state the name and address of the person appointed and shall be given, duly signed by the candidate, to the presiding officer or the returning officer as the case may be.

#### **Taking of poll and the ballot**

**57.** (1) The poll shall be taken in each electoral district by secret ballot in accordance with the provisions of sections 60, 61 and 62.

(2) The ballot of each voter shall be a printed paper in Form 46 (in this Act called "a ballot paper") in which the names, addresses, occupations and symbols of the candidates, alphabetically arranged in the order of their surnames and numbered accordingly shall be printed exactly as they are set out in the nomination paper.

(3) The poll for the Island-wide electoral district shall be dealt with at the same time as the poll for each electoral district, and each ballot paper shall have a separate section with the same information as in subsection (2) for each of the candidates in the Island-wide electoral district and there shall be a line of perforations between the part of the ballot paper for the local electoral district and the part of the ballot for the Island-wide electoral district to permit them to be separated and counted as described at section 72(1)(e).

(4) Each ballot paper shall have attached to it a counterfoil with a number printed on the face of the ballot paper and there shall be a line of perforations between the remainder of the ballot paper and the counterfoil.

#### **Inspection of polling station**

**58.** Each presiding officer shall, on or before the day fixed for taking the poll, visit his polling station and see that it is provided with proper conveniences as aforesaid for taking the poll.

#### **Where voter shall vote**

**59.** (1) Every person whose name appears upon the official list of voters for any polling division shall be entitled to vote in that polling division,

(a) in an election in the local electoral district in which that polling division is situate; and

(b) in an election for the Island-wide electoral district,

and may so vote notwithstanding that he is not resident in the local electoral district on polling day.

(2) Subject to section 67 no person shall be entitled to vote in any polling division unless his name appears on the official list of voters in respect of that polling division.

(3) No person shall vote,

(a) at more than one polling station on the same day;

(b) in more than one local electoral district on the same day;

(c) more than once in the same local electoral district on the same day;

(d) more than once in the same election in the Island-wide electoral district.

(4) Any person contravening the foregoing provisions of this section shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding \$1,000 or to imprisonment for a term not exceeding six months.

### **Restriction on voting**

**60.** (1) In an election in a local electoral district no person shall vote for more than one candidate.

(2) In a general election in the Island-wide electoral district no person shall vote,

(a) for more than four candidates; and

(b) more than once for any one candidate.

(3) In an election other than a general election in the Island-wide electoral district no person shall vote,

(a) for more candidates than there are seats to be filled; and

(b) more than once for any one candidate.

### **Proceeding at poll**

**61.** (1) At the hour fixed for opening the poll the presiding officer and the poll clerk shall, in the presence of such of the candidates, their agents and voters as are present, open the ballot box and ascertain that there are no ballot papers or other papers therein, after which the box shall be locked, and the presiding officer shall keep the key thereof; the box shall be placed on a table in full view of all present and shall be maintained there until the close of the poll.

(2) Immediately after the ballot box is so locked, the presiding officer shall call on the voters to vote.

(3) The presiding officer shall secure the admittance of every voter in the polling station and shall see that they are not impeded or molested at or about the polling station.

(4) Every voter, upon entering the polling station, shall declare his name, address, date of birth and occupation, and present his voter registration card if any

has been issued to him. The poll clerk shall then ascertain if the name of the voter appears on the official list of voters used at the polling station. When it has been ascertained that the applicant voter is qualified to vote at the polling station, his name, address and occupation shall be entered in the poll book to be kept by the poll clerk in accordance with the Regulations, a number corresponding to the consecutive number allotted to the voter on the official list of voters being prefixed to the voter's name in the appropriate column of the poll book, and the voter shall be immediately allowed to vote, unless an election officer or any agent of a candidate present at the polling station desires that he be first sworn.

(5) The poll clerk shall,

- (a) make such entries in the poll book opposite the name of each voter as the presiding officer pursuant to the provisions of this Act directs;
- (b) enter in the poll book opposite the name of each voter as soon as the voter's ballot paper has been deposited in the ballot box, the word "voted";
- (c) enter in the poll book the word "Sworn" or "Affirmed" opposite the name of each voter, to whom any oath or affirmation has been administered indicating the nature of the oath or affirmation; and
- (d) enter in the poll book the words "Refused to be sworn" or "Refused to affirm" or "Refused to answer" opposite the name of each voter who has refused to take an oath or affirm, when he has been legally required so to do, or has refused to answer questions which he has been legally required to answer.

#### **Procedures for poll to be followed for each election**

**62.** The procedures for conducting the poll prescribed in this Act shall apply to each election whether it is a general election for both the Island-wide electoral district and for a local electoral district or is an election for one only.

#### **Admission to polling stations**

**63.** (1) The presiding officer shall keep order at his polling station and shall regulate the number of voters to be admitted at a time, and shall exclude all other persons except the Supervisor of Elections, the returning officer of the electoral district, the poll clerk, the candidates, one agent for each candidate appointed by such candidate in accordance with section 56, any approved international observers, and the police officers on duty.

(2) The agents aforesaid shall be posted in such a place that they can see each person who presents himself as a voter and hear his name as given in by him, but so that they cannot see how any voter votes. They shall not interfere in the proceedings save in so far as they may be allowed by this Act.

(3) If any person persists, after being warned, in disobeying the directions of the presiding officer or in acting in contravention of this section, it shall be lawful for the presiding officer to cause him to be removed from the polling station.

### **General mode of taking ballot**

**64.** (1) Each voter shall after identifying himself receive from the presiding officer a ballot paper on which such officer has previously placed his initials as indicated in accordance with the Regulations so that when the ballot paper is folded the said initials can be seen without opening it, and on the counterfoil of which he has placed a number corresponding to the consecutive number on the official list of voters and entered in the poll book opposite the name of the voter.

(2) The presiding officer shall instruct the voter how to make his mark, which shall be a cross ("X"), by referring him to a specimen ballot paper posted in a conspicuous place at the polling station.

(3) Immediately after complying with subsections (1) and (2), the presiding officer shall properly fold the voter's ballot paper, directing him to return it, when marked, folded as shown, but without inquiring or seeing for whom the voter intends to vote, except when the voter is unable to vote in the manner prescribed by this Act by reason of being an elderly person, illiteracy, or physical incapacity.

(4) The voter on receiving the ballot paper shall forthwith enter one of the polling compartments in the polling station and there mark his ballot paper by marking with a black lead pencil a cross ("X"), and not otherwise, within the space opposite the name of the candidate for whom (and, in the case of the Island-wide electoral district where there is more than one seat to be filled, the names of the candidates) he intends to vote for; and he shall then fold the ballot paper as directed so that the initials and the numbers on the counterfoil can be seen without opening it, and hand the paper to the presiding officer who shall, without unfolding it, ascertain by examination of the initials and the numbers appearing thereon that it is the same paper as that delivered to the voter and, if the same, he shall,

- (a) in full view of the voter and of all others present remove the counterfoil;
- (b) deposit the ballot paper into the ballot box; and
- (c) place the counterfoil in a receptacle reserved by him for that purpose and in his custody.

(5) A voter who has inadvertently dealt with a ballot paper delivered to him so that it cannot conveniently be used shall return that ballot paper to the presiding officer who shall cancel it by writing the word "spoiled" across the back of the same and thereafter deliver another ballot paper to that voter.

(6) Every voter shall vote without undue delay and shall leave the polling station as soon as his ballot paper has been put in a ballot box.

(7) If at the hour of the closing of polls in accordance with section 51 (3), there are any voters who,

- (a) are qualified to vote, but have not been able to do so since their arrival at the polling station; and
- (b) are in the line of waiting voters,

the poll shall be kept open to enable such persons to vote in accordance with the directions of the presiding officer.

(8) Where there are any matters or issues to be determined respecting the line of waiting voters, the presiding officer shall decide every question arising therefrom and the decision of the presiding officer shall be final.

#### **Questions which may be put to a voter**

**65.** (1) The presiding officer may, and shall if requested by a candidate or his agent, put to the voter the following questions,

(a) Are you the same person whose name appears as "A.B." on the official list of voters now in force for this polling division?

(b) Have you already voted at this election either here or elsewhere?

(2) If the person refuses to answer any question put to him as in this section provided or answers question (a) other than in the affirmative or question (b) or (c) other than in the negative, the presiding officer shall refuse to give him a ballot paper.

(3) If any person makes a false answer to any such question he shall be guilty of an offence and liable, on summary conviction, to a fine of \$9,600 and to imprisonment for six months.

#### **Mode of taking ballot in special cases**

**66.** (1) Subject to all other provisions of this Act as to proof of qualification as a voter, and as to the administration of oaths, if a person representing himself to be a particular voter applies for a ballot paper after another person has voted as such person, he shall be entitled to receive a ballot paper and to vote after he takes the oath of identity in Form 47 and otherwise proves his identity to the satisfaction of the presiding officer by producing,

(a) at least one Government issued identification, such as his voter registration card, driver's licence, or passport; or

(b) any other identification acceptable to the presiding officer.

(2) In any case under subsection (1), the presiding officer shall put his initials on the ballot paper together with a number on the counterfoil attached to the ballot paper corresponding to the number allotted to the voter on the official list of voters entered in the poll book opposite the name of such voter, and the poll clerk shall enter in the poll book,

(a) the name of such voter;

(b) a note of his having voted on a second ballot paper issued under the same name;

(c) the fact of the oath of identity having been required and taken, and the fact of any other proof of identity so required and accepted; and

(d) any objections made on behalf of any of the candidates, and of which candidates.

- (3) The presiding officer, on the application of any voter who is incapacitated,
- (a) by reason of any physical cause;
  - (b) by reason of being an elderly person; or
  - (c) by reason of illiteracy,

from voting in the manner prescribed by this Act, shall require the voter making such application to take the oath of the incapacity to vote without assistance in accordance with Form 49 in the case of a voter under paragraph (a), or in accordance with Form 50 in the case of a voter under paragraph (b) or (c), and shall thereafter, subject to subsection (4), assist such voter by marking his ballot paper in the manner directed by such voter in the presence of the poll clerk and of the sworn agents of the candidates and of no other person, and shall place such ballot in the ballot box.

(4) The presiding officer shall, at the request of any voter under subsection (3), who is accompanied by a friend who is a voter in the local electoral district, permit the friend to accompany the voter into the voting compartment and mark the voter's ballot paper for him; but a person shall not at any election be allowed to act as such friend to more than one voter.

(5) Any friend who, in accordance with subsection (4), is permitted to mark the ballot paper of a voter who is unable to mark his ballot paper by reason of being an elderly person, illiteracy or any physical incapacity shall first be required to take an oath in accordance with Form 51.

(6) Whenever any voter has had his ballot paper marked as provided in subsection (3) or (4), the poll clerk shall enter in the poll book opposite the voter's name, in addition to any other requisite entry, the reason why such ballot paper was so marked.

(7) For the purposes of this section "friend" includes family and relatives.

#### **Voting where discrepancy of minor nature exists**

**67.** (1) Where there is contained in the official list of voters a name, address and occupation which corresponds so closely with the name, address and occupation of a person by whom a ballot paper is demanded as to suggest that the entry in such list of voters was intended to refer to him, such person shall, upon taking the oath in Form 52 and complying in all other respects with the provisions of this Act, be entitled to receive a ballot paper and to vote. In any such case the name, address and occupation shall be correctly entered in the poll book and the fact that the oath has been taken shall be entered in the proper column of the poll book.

(2) A voter, if required by the presiding officer, the poll clerk, one of the candidates, an agent of a candidate or a voter present, shall before receiving his ballot paper take an oath in Form 53 and, if he refuses to take such oath, erasing lines shall be drawn through his name on the official list of voters and in the poll

book, if such name has been entered in the said book, and the words "Refused to be sworn" shall be written thereafter.

### **Advance polls**

**68.** (1) Where any voter who is duly registered in the Register of Voters for an electoral district in which an election is pending is unable to attend the polling station on the day appointed for the taking of poll because of that voter's employment on the date of the poll, as

- (i) a police officer, nurse, doctor, emergency medical technician;
- (ii) a person employed in the Central Electoral Office;
- (iii) all election officers;

it shall be lawful for such a voter to record his vote at an advance poll to be held for the purpose at such place, and on such date not earlier than three days prior to polling day, as the Supervisor of Elections may, by notice in the *Gazette*, appoint for that purpose.

(2) For the purpose of voting at any advance poll, a voter referred to in subsection (1) shall apply not later than ten days after the issue of the writ for election the Supervisor of Elections in Form 54 for a specially issued card enabling him to vote at an advance poll and the signature of the applicant shall be witnessed in writing by the Supervisor of Elections.

(3) A voter to whom subsection (1) applies, who desires to vote at any advance poll shall be allowed to vote in like manner as he would have been entitled to do on the day appointed for the taking of the poll, except that if he is a voter referred to in subsection (1) (b), he shall not be allowed to vote at an advance poll unless he produces the card specially issued under subsection (2).

(4) Unless the writ otherwise directs, polling stations established for the purpose of recording advance polls shall be opened between 9:00 a.m. and 2:00 p.m.

(5) The Supervisor of Elections may extend the time specified in subsection (4) by Notice published in the *Gazette*.

(6) The Supervisor of Elections may direct that all polling stations established for the purpose of recording advance polls are to be placed at the same location.

### **Conduct of advance polls**

**69.** (1) At an advance poll a separate ballot box shall be provided for each polling division of each electoral district and at the close of such advance poll the ballot papers in each box shall, without any examination, be counted and placed in separate packets and sealed by the officer conducting the poll, each packet clearly designating the number of ballot papers it contains and the polling division and the electoral district to which it relates.



(2) The officer conducting the poll shall, after complying with subsection (1), complete the prescribed form in accordance with the provisions of section 71 (1) (g) and the Regulations.

(3) Each sealed packet of ballot papers taken at an advance poll along with all the relevant forms shall be immediately given by the officer conducting the poll to the Supervisor of Elections to be kept intact, in a vault in his office, until delivery by him on polling day in the election concerned to the presiding officer at the polling station identified for the counting of votes within the electoral district to which the packet relates.

(4) The presiding officer shall open every packet of ballot papers delivered to him pursuant to subsection (3) immediately before the commencement of the poll at an election in the presence of any persons who are lawfully present at that time and shall place the ballot papers without examining them in the relevant ballot box at his poll before he locks it up and places his seal upon it.

(5) For the avoidance of doubt, it is hereby declared that the other provisions of this Act applying to voters, to voting procedure and to elections shall apply so far as is convenient to the taking of an advance poll as they apply to the taking of a poll at an election.

#### **Who may be present**

**70.** (1) In addition to the presiding officer and any poll clerk, the Supervisor of Elections, the returning officer of the electoral district, the candidates and one agent for each candidate in each polling station, the police officers on duty, and no others, shall be permitted to remain in the polling station during the time the poll remains open:

Provided that no candidate and his agent shall be in the same polling station at the same time for more than five consecutive minutes.

(2) The agent of each candidate, on being first admitted to any polling station, shall take an oath in Form 56 to keep secret the name of the candidate for whom any of the voters has marked his ballot paper in his presence.

(3) Agents of candidates may, with the permission of the presiding officer, absent themselves from and return to the polling station at any time before one hour prior to the close of the poll.

#### **Proceedings at the close of poll**

**71.** (1) Forthwith upon the close of the poll the presiding officer shall act in the following order,

- (a) announce the close of poll and record in the poll book, in the manner specified in paragraph (c), the hour at which the poll was closed;
- (b) seal the ballot boxes with the seal provided by the Supervisor of Elections;

- (c) count the number of voters whose names appear in the poll book as having voted and make an entry thereof on the line immediately below the name of the voter, who voted last, thus: "The number of voters who voted at this election in this polling station is ....." (stating the number in words and the hour at which the poll was closed), and sign his name thereto;
- (d) count the spoiled ballot papers, if any, place them in the special envelope supplied for that purpose and indicate thereon in words the number of such spoiled ballot papers and seal the envelope and initial it;
- (e) count the unused ballot papers, place them with all the counterfoils of all used ballot papers in the special envelope supplied for that purpose and indicate thereon in words the number of such unused ballot papers, then seal the envelope and initial it;
- (f) check the number of ballot papers supplied by the returning officer against the number of spoiled ballot papers, if any, the number of unused ballot papers and the number of voters whose names appear in the poll book as having voted in order to ascertain that all ballot papers are accounted for; and
- (g) record the number of ballot boxes in his possession, the number of ballot papers issued to voters, the number of unused ballot papers, the number of spoiled ballot papers and all other information required in accordance with Form 55 and attach his signature thereto.

(2) The ballot boxes, poll book, envelopes containing the spoiled and unused ballot papers, official list of voters, and other documents used at a polling station shall be transmitted to the place identified for the counting of votes within the local electoral district of that polling station or delivered to the returning officer for that district.

(3) The returning officer for each local electoral district may specially appoint one or more persons for the purpose of collecting the ballot boxes and papers aforesaid from a given number of polling stations, and such persons shall, on delivering the ballot boxes and papers to the returning officer, take the oath in Form 57.

(4) Notwithstanding subsection (2), where a polling station within a particular local electoral district is identified as the place to conduct the counting of votes, there shall be no transporting of ballot boxes from that polling station until all ballots for that district have been counted and the provisions of section 72 have been fulfilled.

(5) Subject to subsection (6), the candidates or their agents are entitled to accompany the ballot boxes and papers to the place identified for the counting of votes and subsequently to such other place identified by the Supervisor of Elections.

(6) Where the conveyance carrying the ballot boxes cannot comfortably accommodate more than one polling agent or candidate, a polling clerk and a police officer shall accompany the ballot boxes. The polling agent or agents and candidates shall, if they so desire, be allowed to follow the conveyance carrying the ballot boxes in a separate conveyance in convoy.

(7) The presiding officer shall, with the ballot boxes and papers aforesaid, transmit or deliver to the returning officer for the appropriate district, in the envelope provided for that purpose, the keys of such ballot boxes.

### **Counting of votes, etc**

**72.** (1) After the ballot boxes from every polling station within a local electoral district have been received, the returning officer shall, in the presence of such of the candidates or their agents that are present, and if the candidates or any of them are absent, then in the presence of such as are present, and of at least two voters if none of the candidates is represented,

- (a) examine the ballot boxes and envelopes received from each polling station one at a time, ensuring that the seals thereon are securely affixed;
- (b) count and record the number of ballot boxes and envelopes received from each polling station, ensuring that all ballot boxes and envelopes are accounted for in accordance with the Regulations;
- (c) distribute tally sheets to not less than two poll clerks and two witnesses upon which they shall keep their own score as each vote is called out by the returning officer;
- (d) open each ballot box, one at a time, in order to count the votes;
- (e) in the case of a general election separate along the perforated line the part of the ballot for the local electoral district from the part of the ballot for the Island-wide electoral district;
- (f) count and record the number of votes given to each candidate, including in the case of the Island-wide electoral district, those blanks contained in ballot papers that reflect unmarked ballots in form 59, giving full opportunity for the candidates and their agents to see and examine each ballot;
- (g) reject all ballot papers
  - (i) which have not been supplied by him;
  - (ii) which have not been marked for any candidate;
  - (iii) on which votes have been given for more than the number of candidates to be selected for the electoral district;
  - (iv) on which more than one vote has been cast for any one candidate; or

(v) upon which there is any writing or mark by which the voter could be identified.

(2) Notwithstanding subsection (1) (f), no ballot paper shall be rejected by reason only that,

- (a) the cross is marked outside the space provided;
- (b) more than one cross is marked thereon;
- (c) the presiding officer failed to remove the counterfoil; or
- (d) there is any writing, number or mark placed thereon by the presiding officer,

if there is a clear indication for which candidate the voter intended to vote.

(3) The Supervisor of Elections may, for the purposes of an election in the Island-wide electoral district, appoint additional returning officers and counting agents, as he thinks fit, to deal with the counting of votes in accordance with the provisions of this section.

(4) If in the course of counting the votes any ballot paper is found with the counterfoil still attached thereto, the returning officer shall (after carefully concealing the numbers on the counterfoil thereon from all persons present and without examining them himself) remove such counterfoil.

(5) If in the course of counting the votes the returning officer discovers that the presiding officer has omitted to affix his initials to any ballot paper as provided by section 64 (1), he shall in the presence of a poll clerk and such of the candidates or their agents as are present, affix his initials to such ballot paper and shall count such ballot paper as if it had been initialled by the presiding officer in the first place, provided that he is satisfied that the ballot paper is one that has been supplied to such presiding officer and also that every ballot paper supplied to such presiding officer has been accounted for in accordance with section 71 (1) (f).

(6) The returning officer shall keep a record on the special form printed in the poll book of every objection made by any candidate or his counting agent or any voter present to any ballot paper found in a ballot box, and shall decide every question arising out of the objection.

(7) The decision of the returning officer pursuant to subsection (6) shall be final, subject to reversal on petition questioning the election or return; and every such objection shall be numbered, and a corresponding number placed on the back of the ballot paper and initialled by the returning officer.

(8) Immediately after the counting of the votes pursuant to this section has terminated, a candidate or his counting agent present at the count may, by completing Form 58, demand a recount and thereupon, unless the returning officer considers the demand to be unreasonable having regard to the result of the first count, he shall proceed to recount the votes to ascertain the result of the poll.

(9) The returning officer shall, after the count or recount of the votes as the case may be,

- (a) subject to the final declaration made by the Supervisor of Elections under subsection (17)
  - (i) in the case of a local electoral district, declare the candidate who is found to have the largest number of votes to be elected as the member for the electoral district;
  - (ii) in the case of the Island-wide electoral district, declare the number of votes received by each candidate or candidates as the case may be;
- (b) make up into separate envelopes the ballot papers cast for each candidate and the rejected ballot papers and place these along with all other papers, lists, documents and records of the result of the count conducted under subsection (1) for that district into packets and indicate thereon in words the district from which those papers and documents came and shall seal it up and initial it allowing such agents or witnesses present as may desire to seal them or sign their names thereon in addition or instead and shall place such packets in a ballot box or boxes and seal the said box or boxes;
- (c) complete Form 59; and
- (d) cause all ballot boxes containing the sealed packets, envelope containing the keys of each ballot box and the statement showing the total number of votes polled for each candidate, within that district in accordance with the prescribed form to be delivered to the Supervisor of Elections at the place identified for such purpose in accordance with section 71 (5).

(10) Subject to subsection (11), as soon as practicable after the receipt of all ballot boxes, envelopes, statements and packets, the Supervisor of Elections shall ascertain the total votes cast in favour of each candidate by checking the votes recorded on the statement submitted by the returning officers of each district and thereupon make a declaration in accordance with subsection (17).

(11) If a ballot box has been destroyed or is missing, the Supervisor of Elections shall ascertain the cause of the destruction or loss and shall complete the validation of the results from the statement of the votes recorded by the returning officer for that district as if he had received the ballot box.

(12) If at any time before the counting of votes is completed in accordance with this section, any ballot box or boxes used at any polling station are destroyed, lost, damaged or tampered with, to such an extent that the result of the poll at that polling station cannot be ascertained, the returning officer for the particular district to which such box or boxes relate shall forthwith report the matter to the Supervisor of Elections.

(13) The Governor shall, in consultation with the Supervisor of Elections, after taking all the material circumstances into account,

- (a) declare by proclamation the poll at the polling station referred to under subsection (12) to be void and issue such directions as he thinks fit for the resumption and completion of the counting of votes and of the election; and
- (b) issue a writ under the Public Seal of Anguilla addressed to the relevant returning officer, appointing a day, and fixing the hours for taking a fresh poll at that polling station.

(14) The poll under subsection (13) (b) shall be held at the appropriate polling station or stations in accordance with the provisions of this Act in all respects as if it is the original poll.

(15) The Supervisor of Elections shall adjourn the declaration of results pursuant to subsection (17) until the taking of the fresh poll in accordance with subsection (13) (b) has been completed.

(16) For the avoidance of doubt, it is hereby declared that all provisions relating to proceedings at the close of poll, transporting of ballot boxes, statements etc., to counting and recounting of votes and to elections shall be complied with as regards all other polling stations to which subsection (12) does not apply.

(17) On the completion of the count or recount, as the case may be, in an election,

- (a) in a local electoral district to return one member to the House, the candidate with the largest number of votes shall be declared by the Supervisor of Elections to be elected as a member for the local electoral district;
- (b) in the Island-wide electoral district to return more than one member to the House, the number of candidates equal to the members to be returned with the largest number of votes shall be declared by the Supervisor of Elections to be elected as members for the Island-wide electoral district.

(18) Whenever after the count of votes (including any recount) is completed, an equality of votes is found to exist between any candidates and the addition of one vote would entitle any of those candidates to be elected,

- (a) in the case of a local electoral district, a new writ shall be issued in respect of that electoral district and all proceedings for an election of a member for that electoral district shall commence afresh;
- (b) in the case of the Island-wide electoral district, the Island-wide returning officer shall declare elected any candidate or candidates who received a larger number of votes than the number so found equal and a new writ shall be issued and all proceedings shall be commenced afresh for the election of a member or members to fill the remaining vacancy or vacancies.

### **Maintenance of order at polling station**

**73.** (1) Subject to subsection (2), during the hours when the poll is open upon polling day, no person shall assemble or congregate within one hundred yards of any building in which is situate any polling station.

(2) This section shall not apply,

(a) to any voters who are waiting to poll their votes at such polling station and who obey any instructions which may be given by the presiding officer or poll clerk or any police officer for the purpose of forming a queue with other voters also waiting; or

(b) to any person who may under the provisions of this Act lawfully enter or remain in such polling station.

(3) Any person who contravenes or fails to comply with any of the provisions of this section shall be guilty of an offence and liable on summary conviction to a fine of \$9,600 or imprisonment for three months.

### **Influencing of voters to vote for candidate**

**74.** (1) During the hours that the poll is open upon polling day no person shall upon any public road or in any public place within one hundred yards of any building in which a polling station is situate seek to influence any voter to vote for any candidate or to ascertain for what candidate any voter intends to vote or has voted.

(2) Every person who contravenes any of the provisions of subsection (1) shall be liable on summary conviction to a fine of \$9,600 and to imprisonment for three months.

### **Election return**

**75.** (1) The returning officer within the time specified for the return of any writ shall forward to the Supervisor of Elections,

(a) the writ with his return in Form 60 endorsed thereon that the candidate or candidates with the largest numbers of votes have been elected;

(b) a report of the proceedings showing the number of votes cast for each candidate at each polling station, and making such observations as the returning officer may think proper as to the state of the election papers as received from the presiding officer;

(c) a statement of the number of persons to whom, it appears from the counterfoils, ballot papers have been supplied in the electoral district;

(d) the reserve supply of undistributed blank ballot papers;

(e) the poll book used at each polling station, a packet containing the counterfoils and unused ballot papers, packets containing the ballot papers cast for the several candidates, a packet containing

the spoiled ballot papers, a packet containing the rejected ballot papers and a packet containing the official lists of voters used at the polling stations, and the written appointments of candidates' agents; and

(f) all other documents used for the election.

(2) The Supervisor of Elections shall, on receiving the return of any member or members elected to serve in the Assembly, cause it to be entered, in the order in which such return is received by him, in a book to be kept by him, for such purpose and thereupon immediately cause a notice to be published in the Gazette of the name of the candidate or candidates so elected and in the order in which it was received.

(3) The Supervisor of Elections shall, on receiving the return of any member or members elected to serve in the Assembly, transmit the writ with the return endorsed thereon to the Governor within the time specified in such writ. The Governor shall within seven days of the receipt of the said writ return the same to the Supervisor of Elections for safe custody in accordance with section 72.

(4) The Supervisor of Elections shall, immediately after each general election, cause to be printed a report giving, by polling divisions, the number of votes polled for each candidate, the number of rejected ballot papers, the number of names on the official lists of voters, together with any other information that he may deem fit to include; and shall also, at the end of each year, cause to be printed a similar report on the by-elections held during the year.

(5) If any returning officer wilfully delays, neglects or refuses duly to return any person who ought to be returned to serve in the Assembly for any electoral district, and if it has been determined on the hearing of an election petition respecting the election for such electoral district that such person was entitled to have been returned, the returning officer who has so wilfully delayed, neglected or refused duly to make such return of his election shall forfeit to the person aggrieved the sum of \$20,000 and costs in addition to all damages sustained.

#### **Custody of election documents**

**76.** (1) The Supervisor of Elections shall keep the election documents in safe custody and shall allow no person to have access to them:

Provided that, if any election petition has been presented questioning the validity of any election or return, the Supervisor of Elections shall, on the order of a Judge of the High Court, deliver to the proper officer of that Court the documents relating to the election that is in dispute:

Provided also that after the expiration of twelve months from the day of any election it shall be lawful for the Supervisor of Elections to cause the said documents used at such election to be burnt.

(2) No election documents in the custody of the Supervisor of Elections shall be inspected or produced except on the order of a Judge of the High Court; and an order under this subsection may be made by any such Judge upon his being



satisfied by evidence on oath that the inspection or production of such election documents is required for the purpose of instituting or maintaining a prosecution for an offence in relation to an election or for the purpose of a petition which has been filed questioning an election or return.

(3) Any such order for the inspection or production of election documents may be made subject to such conditions as to persons, time, place and mode of inspection or production as the Judge deems expedient.

### **Custody of ballot boxes**

**77.** Forthwith upon making the return to the writ in accordance with section 72, the returning officer shall cause the ballot boxes used at such election, with their locks and keys and the screens and other appliances used in the polling station, to be transmitted or delivered to the Supervisor of Elections.

## **PART VII**

### **ELECTION PETITIONS**

#### **Petitions against elections**

**78.** A petition complaining of an undue return or undue election of a member of the Assembly (in this Act called an election petition) may be presented to the High Court by any one or more of the persons specified in section 49 (2) (a) of the Constitution, that is to say,

- (a) any person entitled to vote in the electoral district and at the election to which the application relates;
- (b) any person who was a candidate in that electoral district at that election; and
- (c) the Attorney General.

#### **Presentation of election petition and security for costs**

**79.** (1) The following provisions shall apply with respect to the presentation of an election petition,

- (a) the petition shall be presented within twenty-one days after the return made by the returning officer of the member to whose election the petition relates, unless it questions the return or election upon an allegation of corrupt practices and specifically alleges a payment of money or other reward to have been made by any member, or on his account, with his privity, since the time of such return, in pursuance or in furtherance of such corrupt practices, in which case the petition may be presented at any time within twenty-eight days after the date of such payment;
- (b) at the time of the presentation of the petition, or within three days afterwards, security for the payment of all costs, charges and expenses that may become payable by the petitioner,
  - (i) to any person summoned as a witness on his behalf, or

(ii) to the member whose election or return is complained of, or to any other person named as a respondent in the petition, shall be given on behalf of every petitioner except the Attorney General;

(c) the security shall be to an amount of \$1,200 and shall be given by recognisance to be entered into by any number of sureties, who are persons entitled to vote in the electoral district and at the election to which the petition relates, not exceeding four approved by the Registrar of the High Court, or by deposit of money in the High Court, or partly in one way and partly in the other.

(2) The Election Petition Rules found at the Fourth Schedule shall apply to the deposit of security and the practice and procedure for the service and hearing of election petitions and matters incidental thereto until amended or replaced by the Chief Justice.

#### **Avoidance of election of candidate certified guilty of corrupt or illegal practice**

**80.** If a candidate who has been elected is certified by the Judge who tried the election petition questioning the return or election of such candidate to have been personally guilty or guilty by his agents of any corrupt or illegal practice his election shall be void.

#### **Avoidance of election for general corruption, etc**

**81.** Where on an election petition it is shown that corrupt or illegal practices or illegal payments or employments committed in reference to the election for the purpose of promoting or procuring the election of any person thereat have so extensively prevailed that they may be reasonably supposed to have affected the result, his election, if he has been elected, shall be void and he shall be incapable of being elected to fill the vacancy or any of the vacancies for which the election was held.

#### **Trial of election petitions**

**82.** Every election petition shall be tried in the same manner as an action in the High Court by a Judge sitting alone. At the conclusion of the trial the Judge shall determine whether the member of the Assembly whose return or election is complained of or any, and what, other person was duly returned and elected, or whether the election was void, and shall certify such determination to the Governor, and, upon his certificate being given, such determination, subject to the right of appeal to the Court of Appeal contained in section 49 (4) of the constitution, shall be final; and the return shall be confirmed or altered, or a writ for a new election issued, as the case may require, in accordance with such determination or in the case of an appeal to the Court of Appeal, the determination on appeal.

#### **Powers of judge**

**83.** At the trial of an election petition the Judge shall; subject to the provisions of this Act, have the same powers, jurisdiction and authority, and

witnesses shall be subpoenaed and sworn in the same manner, as nearly as circumstances admit as in the trial of a civil action in the High Court, and such witnesses shall be subject to the same penalties for perjury.

## **PART VIII**

### **ELECTION OFFENCES**

#### **Intoxicating liquor not to be sold or given on polling day**

**84.** (1) No intoxicating liquor shall be sold, offered for sale, or given away at any premises situate in any electoral district in which an election is being held to which a licence issued under the Liquor Licences Ordinance applies, at any time between the opening and the closing of the poll on polling day.

Provided that this section shall not apply to a licensed restaurant or hotel.<sup>199</sup>

(2) Any person who contravenes the provisions of this section shall be guilty of an offence and liable on summary conviction to a fine of \$4,000 and to imprisonment for six months.

#### **Employers to allow employees time**

**85.** (1) Every employer shall, on polling day, allow to every voter in his employ a reasonable period for voting, and no employer shall make any deduction from the pay or other remuneration of any such voter or impose upon or exact from him any penalty by reason of his absence during such period.

(2) Any employer who, directly or indirectly, refuses, or by intimidation, undue influence or in any other way, interferes with the granting to any voter in his employ, of such period for voting, as in this section provided, shall be guilty of an offence and liable on summary conviction to a fine of \$20,000 and to imprisonment for six months.

#### **Offences by election officers**

- 86.** Every election officer who,
- (a) makes, in any record, return or other document which he is required to keep or make under this Act, any entry which he knows or has reasonable cause to believe to be false, or does not believe to be true;
  - (b) permits any person whom he knows or has reasonable cause to believe not to be a blind person, an illiterate person or an incapacitated person to vote in the manner provided for blind

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<sup>199</sup> In an island whose main industry is tourism, it seems inappropriate to ban visitors and other guests from enjoying the facilities of the resorts they visit in Anguilla. Historically, the prohibition on sale of alcohol on polling day applied only to rum shops and small retail outlets which were the only premises licensed under the Liquor Licensing Act. It was only in recent years when liquor licences began to be applied to restaurants and hotels, which had previously been licensed by the Ministry of Home Affairs, that the sale of liquor in hotels and restaurants came to be prohibited on polling day. Introducing this exception returns Anguilla to the previous Leeward Island position that hotels and restaurants were not affected by the prohibition.

persons, illiterate persons or incapacitated persons, as the case may be;

- (c) refuses to permit any person whom he knows or has reasonable cause to believe to be a blind person, an illiterate person or an incapacitated person to vote in the manner provided for blind persons, illiterate persons or incapacitated persons, as the case may be;
- (d) wilfully prevents any person from voting at the polling station at which he knows or has reasonable cause to believe such person is entitled to vote;
- (e) wilfully rejects or refuses to count any ballot paper which he knows or has reasonable cause to believe is validly cast for any candidate in accordance with the provisions of this Act; or
- (f) wilfully counts any ballot paper as being cast for any candidate, which he knows or has reasonable cause to believe was not validly cast for such candidate,

shall be guilty of an offence against this section and liable on conviction on indictment to imprisonment for two years.

#### **Acts prohibited on polling day**

**87.** (1) No person shall furnish or supply any loudspeaker, bunting, ensign, banner, standard or set of colours, or any other flag, to any person with intent that it shall be carried, worn or used on motor cars, trucks or other vehicles, as political propaganda, on polling day, and no person shall, with any such intent, carry, wear or use, on motor cars, trucks or other vehicles, any such loudspeaker, bunting, ensign, banner, standard or set of colours, or any other flag, on polling day.

(2) No person shall furnish or supply any flag, ribbon, label or like favour to or for any person with intent that it be worn or used by any person within any electoral district on polling day as a party badge to distinguish the wearer as the supporter of any candidate, or of the political or other opinions entertained or supposed to be entertained by such candidate, and no person shall use or wear any flag, ribbon, label or other favour, as such badge, within any electoral district on polling day.

(3) Nothing contained in subsection (1) or (2) shall be deemed to extend to the furnishing or supplying of any banner bearing only the name of any candidate or only such name preceded by the words "Vote for" or of any rosette or to the use of any such banner on any vehicle or of any such rosette.

(4) No person shall broadcast any item on polling day on any television or wireless transmitting station which would tend to promote or procure the election of any candidate or of any political party.

(5) It shall be the duty of each candidate before midnight on the day before polling day to ensure the removal of all billboards, signs, posters and banners so

erected or posted as to be visible from any public road and which would tend to promote or procure the election of the candidate or of his or her political party.

(6) No person shall consume nor anyone offer any food or drink, save for water, for consumption within one hundred yards of a polling station.

(7) Any person who contravenes any of the provisions of this section shall be guilty of an offence and liable on summary conviction to a fine of \$40,000 and to imprisonment for twelve months.

### **Definition of bribery**

**88.** (1) Any person who,

- (a) directly or indirectly, by himself or by any other person on his behalf, gives, lends, or agrees to give or lend, or offers, promises, or promises to procure or to endeavour to procure any money or valuable consideration to or for any voter, or to or for any person on behalf of any voter, or to or for any other person in order to induce any voter to vote or refrain from voting, or corruptly does any such act as aforesaid on account of any voter having voted or refrained from voting at any election;
- (b) directly or indirectly, by himself or by any other person on his behalf, gives or procures, or agrees to give or to procure, or offers, promises to procure or to endeavour to procure, any office, place or employment to or for any voter, or to or for any person on behalf of any voter, or to or for any other person in order to induce such voter to vote or refrain from voting, or corruptly does any such act as aforesaid on account of any voter having voted or refrained from voting at any election;
- (c) directly or indirectly by himself or by any other person on his behalf, makes any such gift, loan, offer promise, procurement or agreement as aforesaid to or for any person, in order to induce such person to procure, or endeavour to procure, the return of any person as an elected member of the Assembly, or the vote of any voter at any election;
- (d) upon or in consequence of any such gift, loan, offer, promise, procurement or agreement, procures or engages, promises or endeavours to procure the return of any person as an elected member of the Assembly or the vote of any voter at any election;
- (e) advances or pays or causes to be paid, any money to or to the use of any other person, with the intent that such money, or any part thereof, shall be expended in bribery at any election, or who knowingly pays or causes to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any such election;

- (f) before or during any election, directly or indirectly, by himself or by any other person on his behalf, receives, agrees, or contracts for any money, gift, loan or valuable consideration, office, place, or employment for himself or for any other person, voting or agreeing to vote, or for refraining or agreeing to refrain from voting at any election; or
- (g) after any election, directly or indirectly, by himself or by any other person on his behalf, receives any money or valuable consideration on account of any person having voted or refrain from voting at any such election,

shall be guilty of the offence of bribery.

(2) The provisions of subsection (1) shall not extend or be construed to extend to any money paid or agreed to be paid for or on account of any legal expenses incurred in good faith at or concerning an election.

(3) For the purposes of this section "legal expenses" includes,

- (a) the payment of the agents, clerks, canvassers and messengers of candidates;
- (b) payments made for the purpose of hiring vehicles for the conveyance of voters to or from a polling station;
- (c) payments made for the use of any premises for a public meeting in furtherance of the candidature of any person or for the use of any committee room or office for the purpose of promoting or procuring the election of a candidate; and
- (d) payments made in respect of postage, stationery, printing, advertising, the distribution of advertising material and the use of any public address system.

### **Definition of treating**

**89.** The following persons shall be guilty of the offence of treating,

- (a) any person who corruptly, by himself or by any other person, either before, during or after an election, directly or indirectly, gives, or provides or pays, wholly or in part, the expenses of giving or providing any food, drink, entertainment or provision to or for any person for the purpose of corruptly influencing that person, or any other person, to vote or to refrain from voting at such election, or on account of such person or any other person having voted or refrained from voting at such election; or
- (b) any voter who corruptly accepts or takes any such food, drink, entertainment or provisions.

### **Definition of undue influence**

**90.** Any person who, directly or indirectly, by himself or by any other person on his behalf, makes use of or threatens to make use of any force, violence, or restraint, or inflicts or threatens to inflict, by himself or by any other person, any temporal or spiritual injury, damage, harm, or loss upon or against any person, in order to induce or compel such person to vote or refrain from voting or on account of such person having voted or refrained from voting at any election, or who by abduction, duress or any fraudulent contrivance, impedes or prevents the free exercise of the franchise of any voter, or thereby compels, induces or prevails upon any voter either to give or refrain from giving his vote at any election, shall be guilty of the offence of undue influence.

### **Definition of personation**

**91.** Every person who at an election applies for a ballot paper in the name of another person, whether that name be the name of a person living or dead, or of a fictitious person, or who, having voted once at any election, applies at the same election for a ballot paper in his own name, shall be guilty of the offence of personation.

Provided that nothing in this section applies to a person who, when an election takes place at the same time and in the same polling station at which he is entitled to vote for a member to represent a local electoral district and a member or members to represent the Island at large, makes a request in such polling station for a ballot paper in his own name once for each such election.

### **Penalty for bribery, etc**

**92.** Any person guilty of bribery, treating, or undue influence shall be liable on summary conviction, if he is an election officer, to a fine of \$19,200 and to imprisonment for six months, and if he is any other person, to a fine of \$9,600 and to imprisonment for six months.

### **Penalty for personation**

**93.** Any person guilty of personation, or of aiding, abetting, counselling or procuring the commission of the offence of personation, shall, on conviction on indictment, be liable to a fine of \$19,200 or to imprisonment for two years,

### **Disqualification for bribery, etc.**

**94.** Any person who is convicted of bribery, treating, undue influence, or personation, or of aiding, counselling or procuring the commission of the offence of personation shall (in addition to any other punishment) be incapable during a period of seven years from the date of conviction,

(a) of being registered as a voter, or of voting at any election;

(b) of being elected a member of the Assembly or, if elected before his conviction, of retaining his seat as such member.

## **Penalty for certain illegal practices at elections**

- 95.** (1) Any person who,
- (a) votes, or induces or procures any person to vote, at any election, knowing that he or such other person is prohibited by this Act, or by any law in force in Anguilla, from voting at such election;
  - (b) before or during an election knowingly publishes a false statement of the withdrawal of a candidate at such election for the purpose of promoting or procuring the election of another candidate; or
  - (c) between the date of the publication in the Gazette by the returning officer of a notice in accordance with section 46 (1) and the day after polling at the election, whether in a general election or in a by-election, acts in a disorderly manner, with intent to prevent the transaction of the business of a public meeting called for the purpose of promoting the election of a candidate as a member to serve in the Assembly,

shall be guilty of an illegal practice, and liable on summary conviction, if he is an election officer, to a fine of \$19,200 and if he is any other person, to a fine of \$9,600 and be incapable, during a period of five years from the date of conviction, of being registered as a voter or of voting at any election.

(2) Any person who, between the date of the publication by the returning officer of a notice in accordance with section 46 (1), and the day of polling at the election, whether in a general election or in a by-election, incites, combines or conspires with others to act in a disorderly manner with intent to prevent the transaction of the business of a public meeting called for the purpose of promoting the election of a candidate as a member to serve in the Assembly shall be guilty of the offence of an illegal practice and, liable on conviction on indictment, to a fine of \$9,600 and to imprisonment for two years, and be incapable, during a period of five years from the date of conviction, of being registered as a voter of voting at any election.

## **Offences in respect of ballot papers**

- 96.** (1) Any person who,
- (a) forges or counterfeits, or fraudulently defaces or destroys;
  - (b) without due authority supplies a ballot paper to any person;
  - (c) fraudulently puts into any ballot box paper other than the ballot paper which he is authorised by law to put in;
  - (d) fraudulently takes out of the polling station any ballot paper;
  - (e) without due authority destroys, takes, opens, or otherwise interferes with any ballot box or packet of ballot papers then in use for the purpose of any election; or
  - (f) not being duly registered as a voter, votes at an election,



shall be guilty of an offence and liable on summary conviction, if he is an election officer, to a fine of \$19,200 and to imprisonment for six months, and if he is any other person, to a fine of \$9,600 and to imprisonment for three months.

(2) In any information or prosecution for an offence in relation to the ballot boxes, ballot papers, and other things in use at an election, the property in such ballot boxes, ballot papers, or things may be stated to be in the returning officer at such election.

### **Infringement of secrecy**

**97.** (1) Each election officer and agent appointed under section 56 in attendance at a polling station shall maintain and aid in maintaining the secrecy of the voting in such station, and shall not communicate except for some purpose authorised by law, before the poll is closed, to any person any information as to the name or number on the list of voters of any voter who has or has not applied for a ballot paper or voted at that polling station, and no person shall interfere with or attempt to interfere with a voter when marking his vote or otherwise attempt to obtain in the polling station any information as to any candidate for whom any voter in such station is about to vote or has voted.

(2) Each election officer and agent in attendance at the counting of the votes shall maintain and aid in maintaining the secrecy of the voting and shall not attempt to communicate any information obtained at such counting as to a candidate for whom any vote is given in any particular ballot paper.

(3) No person shall, directly or indirectly, induce any voter to display his ballot paper after he has marked it so as to make known to any person the name of a candidate for whom or against whose name he has so marked his vote.

(4) Any person who acts in contravention of this section shall be liable, on summary conviction, to a fine of \$9,600 and to imprisonment for three months.

## **PART IX**

### **DELIMITATION OF ELECTORAL DISTRICTS<sup>200</sup>**

#### **Electoral District Boundaries Commission**

**98.** (1) Within 30 days after this Act comes into effect there shall be appointed for Anguilla an Electoral District Boundaries Commission (hereinafter in this section referred to as the Commission) which shall consist of,

(a) a chairman appointed by the Governor acting in his discretion;

(b) one member appointed by the Governor acting on the advice of the Chief Minister; and

(c) one member appointed by the Governor acting on the advice of the Leader of the Opposition;

none of whom may be a member of the House of Assembly.

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<sup>200</sup> Adapted from the St Kitts-Nevis Constitution, sections 49-50 and schedule 2.

- (2) A member of the Commission shall vacate his office,
- (a) at the next dissolution of the House of Assembly after his appointment;
  - (b) if any circumstances arise that, if he were not a member of the Commission, would cause him to be disqualified for appointment as such; or
  - (c) if the Governor, acting on the advice of the Chief Minister in the case of a member appointed under subsection (1) (b) or in accordance with the advice of the Leader of the Opposition in the case of a member appointed under subsection (1) (c), so directs.

(3) The Commission may regulate its own procedure and, with the consent of the Governor, may confer powers and impose duties on any public officer or on any authority of the Government for the purpose of discharging its functions.

(4) The Commission may, subject to its rules of procedure, act notwithstanding any vacancy in its membership and its proceedings shall not be invalidated by the presence or participation of any person not entitled to be present at or to participate in those proceedings.

Provided that any decision of the Commission shall require the concurrence of a majority of its members.

#### **Review of electoral district boundaries**

**99.** (1) The Electoral District Boundaries Commission (hereinafter in this section referred to as the Commission) shall, in accordance with the provisions of this section, review the number and boundaries of the electoral districts into which Anguilla is divided and submit to the Governor reports either,

- (a) showing the electoral districts into which it recommends that Anguilla should be divided in order to give effect to the rules set out in section 101; or
- (b) stating that, in its opinion, no alteration is required to the existing number of boundaries or electoral districts in order to give effect to those rules.

(2) The first report of the Commission under subsection (1) shall be submitted by the Commission within six months of this Act coming into effect, and thereafter within one year of the taking of any subsequent national census of population.

(3) Within 30 days after the Commission has submitted a report under subsection (1)(a), the Chief Minister shall lay before the House of Assembly for its approval the draft of a proclamation by the Governor for giving effect to the recommendations contained in the report, and that draft proclamation may make provision for any matters that appear to the House of Assembly to be incidental to or consequential upon the other provisions of the draft.

### **Number of local electoral districts**

**100.** Until altered by the Electoral District Boundaries Commission under the provisions of section 99, there shall be nine local electoral districts in Anguilla as set out in the First Schedule and the island shall be one district for the purpose of electing four members at large of the House of Assembly.

### **Rules for delimitation of local electoral districts**

**101.** All of the nine local electoral districts shall contain as nearly equal numbers of inhabitants as appears to the Commission to be reasonably practicable but the Commission may depart from this rule to such extent as it considers expedient to take account of the following factors, that is to say,

- (a) the density of population and, in particular, the need to ensure adequate representation of sparsely populated areas;
- (b) the means of communication;
- (c) geographical features.

## **PART X**

### **MISCELLANEOUS PROVISIONS**

#### **No obligation on voter to disclose vote**

**102.** No voter who has voted at any election shall, in any legal proceedings to question the election or return, be required to state for whom he voted.

#### **Conclusiveness of Register of Voters**

**103.** At any election a person shall not be entitled to vote unless his name is on the Register of Voters for the time being in force by virtue of this Act, and every person whose name is on such Register shall, subject to the provisions of this Act, be entitled to demand and receive a ballot paper and to vote:

Provided that nothing in this section shall entitle any person to vote who is prohibited from voting by any law in force in Anguilla, or relieve such person from any penalties for which he may be liable for voting.

#### **Expenses of elections**

**104.** All expenses properly incurred by, and all remuneration and travelling allowances payable to, officers under this Act shall be defrayed out of the general revenue of Anguilla.

#### **Campaign financing<sup>201</sup>**

**105.** (1) Every political party and organisation shall keep an account book into which shall be recorded,

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<sup>201</sup> Adapted from the Antigua and Barbuda Representation of the People Act, section 83 as amended in 2001 by Act No 17 of 2001.

- (a) all monetary, in kind, and other forms of contributions received by or made to it or to or for any candidate's election expenses whether before, during or after an election;
- (b) the name and address of any person or entity who contributes any money or other thing which exceeds \$5,000;

(2) No political party, organisation or candidate shall accept any monetary or other contribution exceeding \$5,000 unless it can identify the source of the money or other contribution and record it accordingly in the party account book.

(3) Every political party and organisation procuring the election of a candidate shall, within six weeks after the announcement of the results of the election, file a report of the contributions made by individuals and entities with the Supervisor of Elections.

(4) Every political party shall grant to the Supervisor of Elections access to examine the records and audited accounts kept by the political party in accordance with this section and, on request, shall give all such information as may be requested in relation to all contributions received by or on behalf of the party.

(5) Every political party shall have its accounts audited within six months after the election that it contested and shall file a copy of its audited accounts both on paper and digitally with the Supervisor of Elections who shall cause the audited accounts to be published on the website maintained by the Electoral Office or in default on a publicly accessible government website.

(6) The Supervisor of Elections shall impose a penalty of \$2,000 per day on any party or organisation which fails to comply with this section.

(7) Compliance by the political party with this section is the responsibility of each candidate who contested the election under the party's symbol.

(8) Until the report required under subsection (3) is filed, or access under subsection (4) is granted, or the audited accounts under subsection (5) is filed, or until the penalty imposed by subsection (6) is paid, a candidate who has been returned as a member of the House of Assembly shall be temporarily disqualified from membership of the Assembly.

### **Computation of time**

**106.** (1) In reckoning time for the purposes of this Act, Saturday, Sunday, Christmas Day, Good Friday and any public holiday, under the Public Holidays Act, shall be excluded.

(2) Where anything required by this Act to be done on any day falls to be done on Saturday or Sunday or on any such excluded day, that thing may be done on the next day, not being a Sunday or one of such excluded days.

### **Removal of difficulties**

**107.** If any difficulty arises in first giving effect to any of the provisions of this Act, the Supervisor of Elections may, by Order published in the Gazette, issue all such directions as he may deem necessary with a view to providing for any special or

unforeseen circumstances or to determining or adjusting any question or matter for the determination or adjustment of which no provision or effective provision is made by this Act.

### **Power to make regulations**

**108.** (1) The Governor may make regulations generally for giving effect to the provisions of this Act and without prejudice to such general power may make regulations in addition to or in substitution for the Regulations found at the Second Schedule and the forms found at the Third Schedule,

- (a) with respect to the financing of election campaigns, including expenses and the making of payments by or on behalf of a candidate, whether before, during or after an election, on account or in respect of the conduct of such election;
- (b) requiring the appointment of an election agent through or by whom all such expenses or payments as aforesaid shall be incurred or made;
- (c) fixing the maximum amount of expenses and payments that may be incurred or paid, whether before, during or after an election, on account or in respect of the conduct of such election;
- (d) fixing the time within which all election expenses shall be paid;
- (e) requiring a return of election expenses and payments and prescribing the form in which the same shall be made and verified;
- (f) prescribing the remuneration and travelling allowances and other expenses which may be paid to election officers appointed under this Act;
- (g) prescribing the duties of returning officers and the procedure to be followed in the performance of their duties;
- (h) amending or replacing the Second Schedule;
- (i) adding to, rescinding, varying or amending any prescribed form; and
- (j) prescribing penalties for the breach of any regulations made hereunder.

(2) Any regulation made under subsection (1) may, in specifying any offence, further specify that any such offence shall be deemed to be an illegal practice.

(3) Regulations made under subsection (1) shall be laid before the House of Assembly as soon as may be after they are made, and shall not continue in force after the expiration of seven days from the time when they are laid unless a resolution is passed by the House of Assembly providing for the continuance thereof.

(4) An election petition may be presented in respect of any illegal practice declared by such regulations to be a ground for presenting such petition, and sections 74, 75, 78 and 79 shall, subject to such regulations, apply to petitions presented in respect of illegal practices.

### **Repeal of RSA c E030**

**109.** The Elections Act and all subsidiary legislation made under it and in force prior to the coming into operation of this Act are repealed.

### **Savings**

**110.** (1) In so far as anything done under the repealed Act could have been done under a corresponding provision of this Act, it shall not be invalidated by the repeal but shall have effect as if done under that provision.

(2) The person who immediately before the coming into operation of this Act was the Supervisor of Elections under the repealed Act shall continue to be the Supervisor of Elections as if that person had been appointed under section 4 on the same terms and conditions for a term expiring on the day on which the appointment under the repealed Act would expire.

(3) The Register of Voters in effect immediately before the coming into operation of this Act shall upon the coming into operation of this Act be deemed to be the Register of Voters in effect at the date of the coming into operation of this Act.

**FIRST SCHEDULE**  
**Local Electoral Districts**

**District One**

Island Harbour, awaiting determination by the Electoral District Boundaries Commission

**District Two**

East End, awaiting determination by the Electoral District Boundaries Commission

**District Three**

North Valley 1, awaiting determination by the Electoral District Boundaries Commission

**District Four**

North Valley 2, awaiting determination by the Electoral District Boundaries Commission

**District Five**

South Valley 1, awaiting determination by the Electoral District Boundaries Commission

**District Six**

South Valley 2, awaiting determination by the Electoral District Boundaries Commission

**District Seven**

Road, awaiting determination by the Electoral District Boundaries Commission

**District Eight**

Blowing Point, awaiting determination by the Electoral District Boundaries Commission

**District Nine**

West End, awaiting determination by the Electoral District Boundaries Commission

**SECOND SCHEDULE<sup>202</sup>**

**ELECTION REGISTRATION REGULATIONS**

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<sup>202</sup> The Second Schedule consists of the existing Election Registration Regulations, RRA E30-1, amended to include some sections from the BVI Elections Act.

<sup>203</sup> The BVI Elections Act does not have separate Elections Registration Regulations. All the regulations and forms are in the Act. The provisions of the BVI Act that deal with forms that are required to supplement the Anguilla Election Registration Regulations and the Forms have been inserted into these Second Schedule Regulations and the Forms in the Third Schedule.



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## INTERPRETATION

### Interpretation

1. (1) In these Regulations—

“Act” means the Elections Act;

“building”, in relation to a polling division, means,

- (a) a public building in the polling division; or
- (b) if no public building is located in the polling division, any building;

“Central Electoral Office” means the office set up in accordance with section 3 of the Act;<sup>204</sup>

“enumeration period” means the period set out in regulation 4;

“form” means a form set out in the Schedule to these Regulations;

“prescribed” means prescribed by the Governor.

(2) A reference in these Regulations to a preliminary list for a polling division is a reference,

- (a) in the case of a preliminary list for an Electoral District that comprises one polling division, to the preliminary list for the Electoral District; and
- (b) in the case of an Electoral District that comprises more than one polling division, to that part of a preliminary list that relates to a particular polling division.

(3) A person who is required to deliver a claim, notice of objection or other document to the Registration Officer may effect delivery by leaving the document addressed to the Registration Officer, or causing it to be left, at his office during office hours.

(4) A person who is required to deliver a notice or other document to a person other than the Registration Officer, may effect delivery on the person by leaving the document, or causing it to be left,

- (a) at the address of the person as given by him for that purpose or as appearing on the relevant preliminary list or list of claimants; or
- (b) if there is no such address, at his last known residence.

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<sup>204</sup> We have attempted to cross-reference the section numbers as accurately as we can, but some anomalies may remain. We respectfully depend on the legal draftspersons in the A-G’s Department to ensure all is perfect

### **Form of list of voters**

2. The names in each preliminary list of voters shall be arranged in alphabetical order on Form 1,<sup>205</sup> or in street order on Form 3, as determined by the Supervisor of Elections and shall be numbered consecutively beginning with the number one.

## **ENUMERATION**

### **Application of regulations 4 to 25**

3. Regulations 4 to 25 apply to the enumeration year.

### **Commencement of enumeration**

4. The Registration Officer for an Electoral District shall, between 1st July and 30th September in the enumeration year, cause to be prepared in accordance with the Act and these Regulations a preliminary list of all persons who are qualified as voters in each polling division in the Electoral District.

### **Appointment of enumerators**

5. The Registration Officer shall in Form 5 appoint a person to be enumerator for each polling division in the Electoral District.

### **Qualification of enumerators**

6. Each enumerator shall be qualified as a voter in any Electoral District.

### **Removal by Registration Officer**

7. The Registration Officer may at any time replace any enumerator appointed by him by appointing another enumerator to act in his place, and any enumerator so replaced shall, on request in writing signed by the Registration Officer, deliver to the person appointed in his place or to any other authorized person, any instructions, index books or other papers and any information which he has obtained for the purpose of the performance of his duties.

### **Oath or affirmation of office of enumerator**

8. (1) Every enumerator shall forthwith on his appointment take an oath or affirmation as enumerator in Form 6, detach it from the form of appointment and send it to the Registration Officer.

(2) The Registration Officer shall certify in the manner appearing on Form 6 that the enumerator has taken the oath or affirmation.

### **Registration notice**

9. The enumerator shall, immediately after his appointment, affix on 2 buildings in his polling division, a copy of a registration notice in Form 7.

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<sup>205</sup> We have attempted to cross-reference the Form numbers as accurately as we can, but some anomalies may remain. We respectfully depend on the legal draftspersons in the A-G's Department to ensure all is perfect

### **Right of entry on premises**

**10.** (1) Every enumerator may enter upon any premises in the polling division in respect of which he is appointed and there make the enquiries that in his opinion are necessary for the purpose of obtaining information as to the persons qualified to be registered as voters.

(2) No enumerator shall enter upon any premises,

(a) except during daylight hours, unless the occupier of the premises consents to his entry otherwise than during those hours; or

(b) at any time when he is not wearing an enumerator's badge supplied to him by the Supervisor of Elections.

(3) Where any enumerator enters upon any premises, he may ask the questions of any person on the premises who appears to him to be of the age of 16 years or over, that in his opinion are necessary to enable him to obtain the information referred to in paragraph (1).

### **House-to-house enquiry**

**11.** (1) After taking his oath or affirmation as enumerator, each enumerator shall, during the enumeration period, ascertain by a house-to-house enquiry the name, address and occupation of every person qualified to vote for the election of a member of the Assembly in the polling division for which the enumerator has been appointed.

(2) When making a house-to-house enquiry, an enumerator shall cause,

(a) every person who believes that he is qualified or will be qualified on the qualifying date to be registered as a voter to complete an application in Form 8 to be registered as a voter in the polling division for which the enumerator has been appointed; or

(b) an adult in the household in which a person referred to in paragraph (a) resides, to complete an application in Form 8 for that person to be registered as a voter in the polling division for which the enumerator has been appointed.

(3) When an enumerator is satisfied that a person is qualified or will be qualified on the qualifying date to be registered as a voter, the enumerator shall enter the name, address and occupation of that person in an index book in Form 10 and shall use the index book to prepare the preliminary list of voters for the polling division for which he has been appointed.

(4) Before departing from a household in respect of which he has made an entry in the index book of persons qualified to be registered as voters, the

enumerator shall make a copy of the entry in Form 11, sign it and leave it at the household.

### **Manner of making enquiry**

**12.** (1) When making a house-to-house enquiry, every enumerator shall wear and prominently display an enumerator's badge provided by the Supervisor of Elections as evidence of his authority to enter the premises for the purposes of a house-to-house enquiry.

(2) Every enumerator shall keep the scrutineers in his polling division informed of the notices issued by him in respect of the enumeration and of the times at which such enumerator proposes to commence or continue the house-to-house enquiry for purposes of the enumeration.

(3) No enumerator shall, in the course of performing his duties of an enumerator, ask any question or make any remark to any person on any premises entered by him with a view to ascertaining or to influencing the political opinions of any person on those premises.

(4) An enumerator who contravenes paragraph (3) is liable on summary conviction to a penalty of \$4,000 and to forfeiture of his right to payment for his services as enumerator.

### **Complete enumeration**

**13.** Each enumerator shall exercise the utmost care in preparing the preliminary list of voters for the polling division for which he has been appointed and in particular shall take all necessary precautions to ensure that the list when completed,

(a) contains the name, address and occupation of every qualified voter in the polling division; and

(b) does not contain the name of any person who is not so qualified.

### **Application for scrutineers**

**14.** Any political party that desires to have a scrutineer appointed in connection with the registration of voters in a polling division shall make application for his appointment in Form 13.

### **Offences relating to applications for appointment of scrutineers**

**15.** Any person who,

(a) makes any false statement in an application for the appointment of a scrutineer; or

(b) without authority or instructions makes or tenders such an application;

is liable on summary conviction to a penalty of \$4,000.

### **Appointment of scrutineers**

16. The Registration Officer shall in Form 23 appoint as scrutineers the persons nominated under section 9 of the Act.

### **Oath or affirmation to be taken by scrutineer**

17. Every scrutineer shall forthwith on his appointment take an oath or affirmation as scrutineer in Form 15, detach it and give it to the Registration Officer who shall, in the manner appearing on the Form, certify that the scrutineer has taken the oath or affirmation.

### **Functions of scrutineer**

18. (1) Subject to paragraph (2), any scrutineer appointed under regulation 16 may accompany the enumerator for the polling division for which he is appointed as a scrutineer at all times when the enumerator is making a house-to-house enquiry.

(2) Every scrutineer shall at all times when acting as a scrutineer wear a badge supplied by the Supervisor of Elections indicating that he is a scrutineer.

(3) No scrutineer shall, in the course of accompanying any enumerator, ask any question or make any remark to any person upon any premises entered by him with a view to ascertaining or to influencing the political views of such person or of any other person upon those premises except that a scrutineer may, on visiting any premises, say, "I represent the ..... party."

(4) A scrutineer who contravenes paragraph (3) is liable on summary conviction to a penalty of \$4,000 and to forfeiture of his right to payment for his services as scrutineer and on conviction his appointment as scrutineer ceases.

### **Offences relating to duties of scrutineers**

19. Any scrutineer who wilfully obstructs, molests or threatens any enumerator or other election officer in the performance of his duties is liable on summary conviction to a penalty of \$4,000 and to forfeiture of any right to payment for his services as scrutineer and on conviction his appointment as scrutineer ceases.

### **Information on preliminary list**

20. The names, addresses and occupations of all voters who are included in a preliminary list shall be written up according to Form 1 or Form 3, as directed by the Registration Officer.

### **Completion, certification and transmission of list**

**21.** (1) The enumerator shall complete the preliminary list not later than 10 days after the last day of the enumeration period.

(2) The enumerator shall,

(a) when the preliminary list is completed, certify it in Form 16; and

(b) not later than the following day, transmit it to the Registration Officer.

### **Enumerators to certify copies of preliminary list**

**22.** (1) The Registration Officer shall on the receipt of the preliminary lists from the enumerators prepare and complete, not later than 25 days after the last day of the enumeration period, 4 typewritten or printed copies of each list.

(2) The typewritten or printed copies shall then be checked by the respective enumerators and certified in Form 16.

### **Distribution of certified copies of preliminary list**

**23.** The Registration Officer shall,

(a) distribute 2 copies of the certified preliminary list to each enumerator; and

(b) arrange one complete set of lists numerically according to polling divisions and send it to the Supervisor of Elections and keep the remaining set for himself.

### **Posting up of preliminary list and notice**

**24.** The enumerator of a polling division shall, 27 days after the last day of the enumeration period, affix or cause to be affixed to each of 2 buildings in his polling division, a certified copy of the preliminary list prepared by him and a notice in Form 17, and the copy and the notice shall remain affixed for 12 days including Sundays.

### **Oath or affirmation of enumerator on completion of work**

**25.** On the completion of his work, the enumerator shall take an oath or affirmation in Form 20.

## **PROCEDURE AFTER THE ENUMERATION YEAR**

### **Central Electoral Office**

**26.** (1) The Central Electoral Office shall be open during regular business hours Monday through Friday, except on public holidays.

(2) The Supervisor of Elections may,

- (a) designate a Registration Officer as Electoral Registration Officer, who shall, in addition to the powers and duties assigned to him by the Supervisor of Elections or under the Act and these Regulations or any other enactment, be responsible for the management of the Central Electoral Office; and
- (b) appoint such staff as are necessary for the administration of the Central Electoral Office.

### **Continuous registration of voters**

**27.** (1) After the enumeration year, a person,

- (a) who is qualified or will be qualified on the next qualifying date to be registered as a voter in an Electoral District and who is not registered on the existing register of voters for that Electoral District;
- (b) whose name appears on the existing register of voters for an Electoral District and who has changed his name, address or occupation but who remains qualified to be registered as a voter in that Electoral District; or
- (c) whose name appears on the existing register of voters for an Electoral District and who has changed address and is ordinarily resident in an Electoral District other than the one in which he is registered;

may appear in person at the Central Electoral Office and submit to the Supervisor of Elections an application in Form 9 to be registered on the quarterly list of voters for the relevant Electoral District.

(2) The applicant shall, in the presence of the Supervisor of Elections or a member of staff of the Central Electoral Office, place his signature and date on the application and produce his birth certificate or Belonger certificate or certificate of naturalization, together with a passport or driver's licence containing his photograph and such evidentiary documents as may be required by the Supervisor of Elections to authenticate the statements in the application.<sup>206</sup>

Provided that where an applicant is unable to place his signature on the application he shall place his thumb print only.

(3) A photograph shall be taken of every person at the same time as that person makes an application for registration.

(4) The Supervisor of Elections shall conduct investigations and hold inquiries as he thinks fit to satisfy himself as to the applicant's eligibility or otherwise to be registered as an elector. For that purpose he may summon witnesses or order

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<sup>206</sup> Paragraphs (2) to (10) are taken from the BVI Elections Act and inserted into the Regulations.



the production of any document that he may deem necessary and receive and record any evidence adduced.

(5) Where an application is made under paragraph (1) to the Supervisor of Elections, he may upon being satisfied that such applicant is qualified as a voter under section 43 (1) of the Constitution, enter his name on a list to be included in any preliminary list to be prepared under regulations 30 and 34.

(6) The Supervisor of Elections shall refuse an application which is not received,

(a) in the case of a general election, by the second day after the day on which the Assembly is dissolved;

(b) in the case of any other election, by the second day after the date on which the relevant vacancy occurred.

(7) The Supervisor of Elections shall as soon as is practicable notify an applicant of the outcome of his application and, where the application is refused, he shall give the grounds for his refusal.

(8) In an application to which paragraph (3) applies, the Supervisor of Elections shall process the application as soon as is practicable after the polling date.

(9) (a) Where the Supervisor of Elections is not satisfied with the applicant's claim to register as a voter, he shall issue to that applicant a notice of disallowance in Form 63.

(b) Where the Supervisor of Elections disallows an application for registration he shall record his reasons for the disallowance and a statement of his reasons shall be set out in the notice of disallowance.

(10) (a) Any person who is aggrieved by a decision of the Supervisor of Elections may within 7 days from the date of the notice of disallowance deliver to the Supervisor of Elections concerned a statement of appeal, to be heard at the same time as objections made against the registration of voters.

(b) The Supervisor of Elections shall maintain a book showing the names, addresses and other particulars of every applicant whose application for registration has been disallowed by him.

(11) The Supervisor of Elections may make inquiries and request and review documents that he considers necessary to determine whether on the next qualifying date the person referred to in paragraph (1) is qualified or will be qualified to be registered as a voter in an Electoral District.

(12) When the Supervisor of Elections is satisfied that the person referred to in paragraph (1) is qualified or will be qualified on the next qualifying date to be registered as a voter in an Electoral District, the Supervisor of Elections shall give to the person a certificate of provisional registration in Form 12.

(13) The Supervisor of Elections shall enter on the quarterly list of voters for the relevant Electoral District, the name, address and occupation of a person to whom a certificate of provisional registration was given under paragraph (3).

### **Form of quarterly lists**

**28.** (1) The quarterly list of voters for each electoral district shall be in Form 4 and shall consist of,<sup>207</sup>

- (a) persons whose names do not appear on the register of voters or any revised quarterly list for any electoral district and who have applied to be registered as voters for an electoral district and who the Supervisor of Elections has reasonable cause to believe are qualified or will be qualified, on the next qualifying date, to be registered as voters in that electoral district;
- (b) persons whose names appear on the register of voters for an electoral district and who have notified the Supervisor of Elections of a change in their name, address or occupation but who remain qualified to be registered as voters in that electoral district; and
- (c) persons whose names appear on the register of voters for an electoral district and who have satisfied the Supervisor of Elections that they have changed address and are ordinarily resident in another electoral district.

(2) A person who is qualified to be registered as a voter but whose name does not appear on the register of voters for an electoral district shall be entitled to be registered on the quarterly list of voters prepared in accordance with paragraph (1), upon making application in accordance with regulation 27 (1).

(3) The quarterly lists of voters for every electoral district shall be revised and published in accordance with regulation 29 and shall be used to revise the register of voters for that electoral district in accordance with regulation 46.

(4) The names in each quarterly list of voters shall be arranged in alphabetical order according to the surname of the voters and shall be numbered consecutively beginning with the number one.

### **Publication of quarterly lists**

**29.** (1) The Supervisor of Elections shall publish the quarterly list of voters for each Electoral District not later than the 42nd day of every quarter of every year.

(2) In addition to any method of publication employed under paragraph (1), the Supervisor of Elections shall post the quarterly list of voters for each Electoral District by affixing the list, together with a revision notice in Form 18, to the Central Electoral Office and to 2 buildings in the Electoral District to which the list relates.

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<sup>207</sup> Paragraphs (1) to (3) are taken from the BVI Elections Act and inserted into the Regulations.

### **Post-enumeration register of voters and preliminary lists**

**30.** (1) After the enumeration year, the Supervisor of Elections shall prepare the register of voters for each Electoral District on a quarterly basis in accordance with the Act and these Regulations.

(2) After the enumeration year, the Supervisor of Elections shall prepare and publish not later than the 72nd day of every quarter of every succeeding year a preliminary list of voters for every electoral district in accordance with this regulation and regulation 48, and the preliminary list when revised and published in accordance with regulation 37 shall, subject to the provisions of this Act and the Regulations, constitute the register of voters for that electoral district.<sup>208</sup>

(3) The preliminary list of voters for each electoral district under paragraph (2) shall be prepared by,

- (a) deleting from the existing register of voters for that electoral district last published under this Act the names, addresses and occupations of persons whom he has reasonable cause to believe are dead or disqualified for registration as voters in that electoral district;
- (b) making the requested alterations to the names, addresses or occupations of persons registered in the existing register of voters for that electoral district last published under this Act and whose names appear on the last revised quarterly list of voters for that electoral district by virtue of regulation 46; and
- (c) adding to the existing register of voters for that electoral district last published under this Act the names, addresses and occupations of persons not registered in the register of voters for that electoral district who he is satisfied are qualified to be registered as voters for that electoral district and whose names appear on the last revised quarterly list of voters for that electoral district by virtue of regulation 46.

(4) For the purposes of paragraph (1), the Supervisor of Elections shall, on a quarterly basis, prepare a preliminary list of voters in Form 2 in accordance with the Act and these Regulations.

(5) The names in the preliminary list of voters shall be arranged in alphabetical order according to the surname of the voters and shall be numbered consecutively beginning with the number one.

(6) The Supervisor of Elections shall publish the preliminary list of voters for each Electoral District not later than the 72nd day of every quarter.

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<sup>208</sup> Paragraphs (2) and (3) are taken from the BVI Elections Act and inserted into the Regulations.

(7) In addition to any method of publication employed under paragraph (4), the Supervisor of Elections shall post the preliminary list of voters for each Electoral District by affixing the list, together with a revision notice in Form 19, to the Central Electoral Office and to 2 buildings in the Electoral District to which the list relates.

## **CLAIMS, OBJECTIONS, CORRECTIONS AND COMPLETION OF LISTS**

### **Forms to be available**

**31.** The Supervisor of Elections shall make available at the places in each Electoral District directed by the Governor a sufficient number of copies of Forms 21, 22, 23, 24 and 25.

### **Supply of forms**

**32.** The Supervisor of Elections shall, without fee, on the application of any person, supply forms of claim and notices of objection.

### **Names on more than one list and mis-spelt names**

- 33.** (1) During the enumeration year, any voter,
- (a) whose name appears on more than one preliminary list of voters shall in Form 24 forthwith notify the Supervisor of Elections of the polling division in which he elects to have his name retained; or
  - (b) whose name is spelt incorrectly on a preliminary list of voters shall in Form 25 forthwith notify the Supervisor of Elections of the polling division of the inaccuracy.
- (2) After the enumeration year, any voter,
- (a) whose name appears on a quarterly list of voters or a preliminary list of voters for more than one Electoral District, shall in Form 24 forthwith notify the Supervisor of Elections; or
  - (b) whose name is spelt incorrectly on a quarterly list of voters or a preliminary list of voters shall in Form 25 forthwith notify the Supervisor of Elections of the inaccuracy.

### **Claims to be delivered to Registration Officer**

**34.** (1) During the enumeration year, any person who claims to be entitled to be registered as a voter, and who is not entered, or is entered in an incorrect manner or with incorrect particulars in the preliminary list of voters, may claim to be registered, or to be registered correctly, as the case may be, by delivering to the Supervisor of Elections, not later than 38 days after the last day of the enumeration period, a notice of claim in Form 21.

(2) Upon receipt of a claim referred to in paragraph (1), the Supervisor of Elections may make inquiries and request and review documents that he considers necessary to determine whether the claimant is entitled to be registered as a voter in, or whether corrections should be made in relation to the claimant to, the preliminary list of voters.

(3) After the enumeration year, any person who,

- (a) holds a certificate of provisional registration and who is not entered or is entered in an incorrect manner or with incorrect particulars in the quarterly list of voters for an Electoral District; or
- (b) applied to be registered on the quarterly list of voters for an Electoral District and did not receive a certificate of provisional registration, but who reasonably believes he is qualified to be registered;

may claim to be registered or to be registered correctly, as the case may be, by delivering a notice of claim in Form 22 to the Supervisor of Elections not later than 7 days after the first day on which the quarterly list of voters was published.

(4) Upon receipt of a claim referred to in paragraph (3), the Supervisor of Elections shall review the claim to assess whether,

- (a) the claimant is not listed, is listed incorrectly or is listed with incorrect particulars on the quarterly list of voters; and
- (b) the claim contains or is accompanied by information necessary to make the required determinations.

(5) If additional information is required, the Supervisor of Elections shall give notice to the claimant setting out what additional information is required and a statement to the effect that failure to provide the information within 7 days will result in the claim being rejected.

(6) If the claimant does not provide the information within 7 days of the date of the notice,

- (a) the claim shall be rejected; and
- (b) the Supervisor of Elections shall give notice to the claimant that the claim is rejected.

(7) If a person whose claim is rejected under paragraph (6) wants to make another claim at a later time, he shall submit a new notice of claim in Form 22 and paragraphs (4) to (6) apply to the new notice of claim.

### **Publication of claims to insertion or correction**

**35.** (1) During the enumeration year, the Supervisor of Elections shall, not later than 40 days after the last day of the enumeration period, cause to be affixed for 5 days to 2 buildings in the polling division a list, in Form 28, of names of persons living in the polling division who claim under regulation 34 (1) that their names should be inserted in, or that corrections should be made to, the preliminary list of voters.

(2) After the enumeration year, the Supervisor of Elections shall, not later than 8 days after the first day of publishing of a quarterly list of voters, publish for 7 days a list, in Form 28, of names of persons who claim under regulation 34 (3) that their names should be inserted in, or that corrections should be made to, that quarterly list of voters.

### **Notice of objection to claims**

**36.** (1) During the enumeration year, any person whose name appears on the preliminary list of voters for an Electoral District may object to the registration of any person whose name is included in the list of claimants prepared in accordance with regulation 35 (1) by delivering or causing to be delivered a notice of objection in Form 23 to the Registration Officer and a copy of the notice to the person whose claim is being objected to.

(2) A notice under paragraph (1) shall be delivered not later than 44 days after the last day of the enumeration period.

(3) After the enumeration year, any person whose name appears on the existing register of voters for an Electoral District may object to the registration of any person whose name is included in the list of claimants prepared in accordance with regulation 35 (2) by delivering or causing to be delivered a notice of objection in Form 23 to the Supervisor of Elections and a copy of the notice to the person whose claim is being objected to.

(4) A notice under paragraph (3) shall be delivered not later than 15 days after the first day of publishing of the quarterly list of voters.

(5) When the Supervisor of Elections receives a notice of objection under this regulation, he shall immediately deliver or cause to be delivered a notice in Form 26 to the person in respect of whose claim the notice of objection is given and a notice in Form 27 to the person making the objection.

### **Publishing lists of objections to claims**

**37.** (1) During the enumeration year, the Supervisor of Elections shall, not later than 45 days after the last day of the enumeration period, cause to be affixed for 5 days to 2 buildings in the polling division a list, in Form 29, of names of persons included in the list of claims for the polling division to whose registration notice of objection has been given.

(2) After the enumeration year, the Supervisor of Elections shall, not later than 16 days after the first day of publishing of a quarterly list of voters, publish for 5 days a list, in Form 29, of names of persons included in the list of claims to whose registration notice of objection has been given.

### **Notice of objection to registration**

**38.** (1) During the enumeration year, any person whose name appears on the preliminary list for an Electoral District may object to the registration of any person whose name is included in that list by delivering to the Supervisor of Elections notice of objection in Form 23.

(2) A notice under paragraph (1) shall be delivered not later than 38 days after the last day of the enumeration period.

(3) After the enumeration year,

(a) any person whose name appears on the existing register of voters last published for an Electoral District, may object to the registration of a person whose name is included on the quarterly list of voters for that Electoral District; or

(b) any person whose name appears on the preliminary list of voters for an Electoral District, may object to the registration of a person whose name is included on that list;

by delivering notice of objection in Form 23 to the Supervisor of Elections.

(4) A notice of an objection referred to in paragraph (3)(a) shall be delivered not later than 10 days after the first day of publishing the quarterly list of voters and a notice of an objection referred to in paragraph (3)(b) shall be delivered not later than 8 days after the first day of publishing the preliminary list of voters.

(5) When the Supervisor of Elections receives a notice of objection under this regulation, he shall immediately deliver or cause to be delivered a notice in Form 26 to the person in respect of whose registration the notice of objection is given and a notice in Form 27 to the person making the objection.

### **Publication of objections to registration**

**39.** (1) During the enumeration year, the Supervisor of Elections shall, not later than 40 days after the last day of the enumeration period, cause to be affixed for 5 days to 2 buildings in the polling division a list in Form 29 of names of persons whose names appear on the preliminary list of voters to whose registration notice of objection has been given.

(2) After the enumeration year, the Supervisor of Elections shall,

- (a) not later than 11 days after the first day of posting of a quarterly list of voters, publish for 7 days a list, in Form 29, of persons whose names appear on that quarterly list and to whose registration notice of objection has been given; and
- (b) not later than 9 days after the first day of posting of a preliminary list of voters, publish for 5 days a list, in Form 29, of persons whose names appear on that preliminary list and to whose registration notice of objection has been given.

### **Consideration of claims**

**40.** (1) The Supervisor of Elections shall consider all claims of which notice is given to him in accordance with these Regulations and in respect of which no notice of objection is given, and if he considers that any claim may be allowed without further enquiry, shall give notice in Form 30 to the claimant that his claim is allowed.

(2) Where no notice of objection has been given in respect of a claim, if the Supervisor of Elections is not satisfied that a claim can be allowed without enquiry, he shall give at least 5 clear days' notice to the claimant of the time and place at which the claim will be considered by him.

(3) On the consideration of any claim by the Supervisor of Elections any person appearing to the Supervisor of Elections to be interested may appear and be heard in person or by any other person, other than counsel, on his behalf.

(4) The claimant or the objector and any other person, as the case may be, appearing to the Supervisor of Elections to be interested, may appear and be heard personally on the matter.<sup>209</sup>

(5) The Supervisor of Elections shall permit the claimant or the objector or other person interested, as the case may be, to give or adduce oral or documentary evidence in support of or in opposition to the claim or the objection.

(6) The Supervisor of Elections may require that the evidence tendered by any person be given upon oath or affirmation as commonly administered in a court and may administer an oath or affirmation for that purpose and may take affidavits.

(7) The Supervisor of Elections may require any person appearing before him to furnish to him such additional information as he considers necessary for a proper determination of the application and for the prevention of fraudulent registration and may of his own motion make further inquiries for those purposes.

(8) Where any question arises as to whether any person is deemed to belong to Anguilla or is a British Overseas Territories subject, the Supervisor of Elections may have recourse to the Attorney-General's Chambers, and a statement signed by on or behalf of the Attorney-General as to the status of any such person

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<sup>209</sup> Paragraphs (4) to (9) are taken from the BVI Elections Act and inserted into the Regulations.



shall, for the purposes of the proceedings and without prejudice to any other evidence before him, be sufficient evidence of the facts stated therein.

(9) The Supervisor of Elections shall inform the claimant or objector or any person objected to of his decision upon the claim or objection and shall if requested by the claimant or the objector or any person objected to give in writing his reasons for making the decision.

### **Consideration of objections**

**41.** (1) The Supervisor of Elections shall consider all objections of which notice has been given to him in accordance with these Regulations and for that purpose give at least 5 clear days' notice to the objector and to the person in respect of whose registration the notice of objection has been given of the time and place at which the objection will be considered by him.

(2) On the consideration of any objection or other matter by Supervisor of Elections any person appearing to the Registration Officer or the Supervisor of Elections to be interested may appear and be heard in person or by any other person, other than counsel, on his behalf.

### **Correction of lists**

**42.** (1) During the enumeration year, the Supervisor of Elections shall make any correction to the preliminary list of voters that is required to carry out his decision in respect of any claim or objection.

(2) After the enumeration year, the Supervisor of Elections shall make any correction,

- (a) to a quarterly list of voters that is required to carry out his decisions in respect of any claim or objection; and
- (b) to a preliminary list of voters that is required to carry out his decisions in respect of any objection.

(3) In addition to any correction required to carry out a decision in respect of any claim or objection, to ensure that the preliminary list of voters is complete and accurate as a register, the Supervisor of Elections may,

- (a) remove duplicate entries (subject to any expression of choice by persons affected as to those entries);
- (b) expunge the names of persons who are dead or subject to any legal disqualification; and
- (c) correct clerical errors.

### **Objection to corrections**

**43.** (1) During the enumeration year, where the Supervisor of Elections makes a correction referred to in regulation 33(1)(a) or (b) in the preliminary list of voters, he shall give notice in Form 31 to the person affected by the correction and allow that person an opportunity of objecting to the correction and, if necessary, of being heard with respect to it.

(2) After the enumeration year, where the Supervisor of Elections makes any correction referred to in regulation 33(2)(a) or (b) in a quarterly list of voters or in a preliminary list of voters, he shall give notice in Form 31 to the person affected by the correction and allow that person an opportunity of objecting to the correction and, if necessary, of being heard with respect to it.

(3) The Supervisor of Elections shall make any correction to the quarterly list of voters or preliminary list of voters, as the case may be, that is required to carry out his decision in respect of any objection under this regulation.

### **Completion of lists**

**44.** The Supervisor of Elections shall ensure that the quarterly or preliminary lists of voters required under the Act are completed as expeditiously as possible in time for publication of the register of voters in accordance with the Act and these Regulations.

### **Certification and publication, etc. of revised preliminary lists in enumeration year**

**45.** (1) During the enumeration year, the Supervisor of Elections shall, after revising the preliminary list of voters in accordance with regulations 42 and 43,

- (a) certify three copies of the revised preliminary list in Form 32 for each Electoral District;
- (b) not later than 59 days after the last day of the enumeration period, publish a certified copy of the revised preliminary list.

(2) When published in accordance with these Regulations, the revised preliminary list of voters for an Electoral District constitutes the register of voters for that Electoral District.

(3) During the enumeration year, after the date on which the register is proclaimed to be in force, the Supervisor of Elections shall, on the application of any person during business hours and on payment of the prescribed fee, furnish the person with a copy of the register of voters.

(4) In the enumeration year, when a writ is issued, the Supervisor of Elections shall immediately transmit a certified copy of the register of voters to the Returning Officer for each Electoral District.

### **Certification and publication of revised quarterly lists post-enumeration**

**46.** After the enumeration year, the Supervisor of Elections shall, after revising a quarterly list of voters in accordance with regulations 42 and 43,

- (a) certify two copies of the revised quarterly list in Form 33 for each Electoral District;
- (b) not later than 28 days after the first day of posting of the quarterly list, publish a certified copy of that revised quarterly list.

### **Transfer from revised quarterly lists to preliminary lists**

**47.** (1) After the enumeration year, the Supervisor of Elections shall, not later than the 71st day of every quarter, transfer the names, addresses and occupations of persons named on the revised quarterly list of voters for an Electoral District to the preliminary list of voters for that Electoral District.

(2) When the name, address and occupation of a person described in regulation 27(1)(c) is transferred to the preliminary list of voters for an Electoral District, the Registration Officer shall delete the name, address and occupation of that person from the preliminary list of voters for the Electoral District in which that person was previously registered.

### **Certification and publication, etc. of revised preliminary lists post-enumeration**

**48.** (1) After the enumeration year, the Supervisor of Elections shall, after revising a preliminary list of voters in accordance with regulations 46 and 47,

- (a) certify three copies of the revised preliminary list in Form 32 for each Electoral District;
- (b) deliver one certified copy of the revised preliminary list to the Supervisor of Elections and retain the other copies; and
- (c) not later than the last day of every quarter of every year, publish a certified copy of the revised preliminary list.

(2) When published in accordance with these Regulations, the revised preliminary list of voters for an Electoral District constitutes the register of voters for that Electoral District.

(3) After the enumeration year, after the date on which the register is proclaimed to be in force, the Supervisor of Elections shall, on the application of any person during business hours and on payment of the prescribed fee, furnish the person with a copy of the register of voters.

(4) After the enumeration year, when a writ is issued, the Supervisor of Elections shall immediately transmit a certified copy of the register of voters to the Returning Officer for each Electoral District.

### **Insertion of names in register of voters**

**49.** (1) If the Supervisor of Elections has reasonable cause to believe that the name of any voter who has been included in the preliminary list of voters for any polling division has through inadvertence been omitted from the register of voters for that Division, the Supervisor of Elections shall ascertain by reference to the relevant preliminary list, whether the omission of that name has been made.

(2) If the omission is verified, the Supervisor of Elections shall insert in the copies of the register of voters the name, address and occupation of the voter concerned and initial the correction and shall,

(a) notify the person whose name was omitted, of the insertion; and

(b) send a copy of the corrected register to the Returning Officer for the Elections District concerned.

(3) The Supervisor of Elections shall not insert the name of any person,

(a) expunged by him from the preliminary list of voters in pursuance of a decision in respect of an objection made by him under regulation 42; or

(b) at any time after 7 days immediately before polling day.

(4) When a Returning Officer receives a copy of the corrected register in accordance with this regulation, the Returning Officer shall give notice of the insertion to the persons whom he believes to be likely to be nominated as candidates for the relevant Electoral District or who have actually been nominated and to the presiding officer for the polling division concerned.

### **Deletion of names from register of voters**

**50.** (1) If, during the period between the revision of any quarterly or preliminary list of voters and nomination day, the Supervisor of Elections has reasonable cause to believe that there appears on any register of voters the name of any person who is not qualified for inclusion on the register or that any insertion that has been made under regulation 49 is in respect of a person who is not entitled to be included in the register, he shall hold a special revision to investigate the case.

(2) The Supervisor of Elections shall give at least 5 days' notice to the person referred to in paragraph (1) of the time and place at which the special revision will take place and at that time and place consider the eligibility of the person to be included in the register of voters.

(3) If the Supervisor of Elections decides that the name of the person referred to in paragraph (1) should not be included in the register of voters, he shall delete the name from the register of voters and initial the deletion on the copies of the register retained by him.

(4) The Supervisor of Elections shall,

(a) send a copy of the corrected register to the Returning Officer; and

(b) if the register has been transmitted to the Returning Officer under regulation 45(4), 48(4) or 49(2)(c), send a copy of the corrected register to the Returning Officer for the Elections District concerned.

(5) No special revision under this regulation shall be held later than 7 days after nomination day.

(6) When a Returning Officer receives a copy of the corrected register in accordance with this regulation, the Returning Officer shall give notice of the deletion to the persons whom he believes to be likely to be nominated as candidates for the relevant Electoral District or who have actually been nominated and to the presiding officer for the polling division concerned.

## **MISCELLANEOUS**

### **Publication of documents**

**51.** (1) Where the Supervisor of Elections is required by these Regulations to publish any document, he shall publish the document by making the proper entries on the prescribed forms and making a copy of the document available for inspection by the public in his office and electronically, and, if he thinks fit, in any manner that in his opinion is desirable for the purpose of bringing the contents of the document to the notice of those interested.

(2) Failure to publish a document in accordance with these Regulations does not invalidate the document.

### **Destroying or defacing documents**

**52.** Any person who without lawful authority destroys, mutilates, defaces or removes, or makes any alteration in any notice published by the Registration Officer in connection with his registration duties, or any copies of a document which have been made available for inspection in pursuance of these Regulations, is liable on summary conviction to a fine of \$2,000.

### **Inspection and copies of documents**

**53.** The Supervisor of Elections shall, on the application of a person, allow the person to inspect, and take extracts from, or on payment of the prescribed fee, supply to that person, copies of the lists of voters for any registration unit in his

Electoral District and any claim or notice of objection made under these Regulations.

### **Declarations as to age and nationality**

**54.** (1) The Supervisor of Elections, before registering any person as a voter, may, if he thinks it necessary,

(a) require that person to produce a certificate of birth, or, if that is not practicable, to make a statutory declaration that he has attained the required age; and

(b) require that person to produce such other evidence, or to make such statutory declaration, respecting his qualification as a voter (other than age) as the Supervisor of Elections considers appropriate.

(2) Where a declaration is required, no fee is payable for it.

(3) The Supervisor of Elections shall during office hours allow any person to inspect and take a copy of a declaration referred to in paragraph (1).

### **Power to require evidence on oath or affirmation**

**55.** The Supervisor of Elections may, at the request of any person interested, or if he thinks fit without a request, on the consideration of any claim, objection, or other matter, require that the evidence tendered by any person should be given on oath or affirmation and may administer an oath or affirmation for the purpose.

### **Oaths or affirmations of enumerators and scrutineers**

**56.** The Supervisor of Elections may administer an oath or affirmation in the Form referred to in regulation 8, 17 or 25.

### **False declaration**

**57.** Any person who in the course of revision of any preliminary list makes before the Supervisor of Elections any statement upon oath or affirmation which he knows to be false, or does not believe to be true, is guilty of an offence and is liable on summary conviction to imprisonment for 1 year.

### **False documentation, etc. for purpose of being registered**

**58.** Any person who is not qualified to be registered as a voter and who, for the purpose of being so registered, wilfully or knowingly gives any false documentation or information to an enumerator or Registration Officer is guilty of an offence and is liable on summary conviction to imprisonment for 1 year or to a fine of \$10,000 or to both.

**Provisions as to misnomer or inaccurate description**

**59.** No misnomer or inaccurate description of any person or place on any list or on any notice shall prejudice the operation of these Regulations as respects that person or place, if the person or place is so designated as to be commonly understood.

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## THIRD SCHEDULE

### FORMS

#### LIST OF FORMS

**Form**

- 1 Preliminary List of Voters (Alphabetical Order)
- 2 Preliminary List of Voters (Post-enumeration)
- 3 Preliminary List of Voters (Street Order)
- 4 Quarterly List of Voters
- 5 Appointment of an Enumerator
- 6 Oath/Affirmation of Enumerator
- 7 Registration Notice
- 8 Application for Registration on Preliminary List of Voters
- 9 Application for Registration on Quarterly List of Voters
- 10 Index Book
- 11 Copy of Entry Made in Index Book
- 12 Certificate of Provisional Registration
- 13 Application for Appointment of Scrutineer
- 14 Appointment of a Scrutineer
- 15 Oath/Affirmation of Scrutineer
- 16 Certificate of Enumerator
- 17 Revision Notice
- 18 Revision Notice (Quarterly List of Voters)
- 19 Revision Notice (Preliminary List of Voters)
- 20 Oath/Affirmation of Enumerator upon Completion of his Work
- 21 Notice of Claim
- 22 Notice of Claim
- 23 Notice of Objection
- 24 Notice of Election of Residence
- 25 Notice of Mis-spelt Name
- 26 Notice to Person Objected to
- 27 Notice of Hearing of Objection
- 28 List of Claims
- 29 List of Objections
- 30 Notice of Insertion of Correction
- 31 Notice of Intention to Make Corrections or Insertions
- 32 Revised Preliminary List of Voters
- 33 Revised Quarterly List of Voters
- 34 Oath/Affirmation of Returning Officer
- 35 Oath/Affirmation of Registration Officer
- 36 Application for Transfer of Registration
- 37 Voter Registration Card

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<sup>210</sup> We have attempted to cross-reference the Section numbers, Regulation numbers, and Form numbers as accurately as we can, but some anomalies may remain. We respectfully depend on the legal draftspersons in the A-G's Department to ensure all is perfect



38	Application for a Duplicate Voter Registration Card
39	Writ of Election
40	Notice of Nomination Day
41	Nomination Paper
42	Return of Uncontested Election
43	Oath/Affirmation of Presiding Officer
44	Oath/Affirmation of Poll Clerk
45	Directions for the Guidance of Voters
46	Ballot Paper
47	Oath/Affirmation of Identity of a Voter Receiving a Ballot Paper after Another has Voted in his Name
48	Poll Book
49	Oath/Affirmation of Physically Handicapped Voter
50	Oath/Affirmation of an Elderly or Illiterate Voter
51	Oath/Affirmation of Friend of Blind or Illiterate Voter
52	Oath/Affirmation that the Voter is the Person Intended to Be Referred to in the List of Voters
53	Oath/Affirmation of Qualification
54	Application to Be Treated as a Voter at an Advance Poll
55	Ballot Paper and Ballot Box Account
56	Oath/Affirmation of Agent of a Candidate
57	Oath/Affirmation of Messenger Sent to Collect Ballot Boxes
58	Request for Recount
59	Statement of Poll
60	Return after Poll Has Been Taken
61	Certified Joint Statement of Candidature
62	Symbols to Be Used on Ballot Paper
63	Notice of Disallowance

**FORM 1**

(Regulations 2 and 20)

**Preliminary List of Voters (Alphabetical Order)**

[Use Form 1 of the Election Registration Regulations, RRA E30-1.]

**FORM 2**

(Regulation 30(4))

**Preliminary List of Voters (Post-Enumeration)**

[Use Form 2 of the Election Registration Regulations, RRA E30-1.]

**FORM 3**

(Regulations 2 and 20)

**Preliminary List of Voters (Street Order)**

[Use Form 3 of the Election Registration Regulations, RRA E30-1.]

**FORM 4**

(Regulation 28(1))

**Quarterly List of Voters**

[Use Form 4 of the Election Registration Regulations, RRA E30-1.]

**FORM 5**

(Regulation 5)

**Appointment of an Enumerator**

[Use Form 5 of the Election Registration Regulations, RRA E30-1.]

**FORM 6**

(Regulation 8)

**Oath/Affirmation of Enumerator**

(Use Form 6 of the Election Registration Regulations, RRA E30-1)

**FORM 7**

(Regulation 9)

**Registration Notice**

[Use Form 7 of the Election Registration Regulations, RRA E30-1.]

**FORM 8**

(Regulation 11(2))

**Application for Registration on Preliminary List of Voters**

[Use Form 8 of the Election Registration Regulations, RRA E30-1.]

**FORM 9**

(Regulation 27(1))

**Application for Registration on Quarterly List of Voters**

[Use Form 9 of the Election Registration Regulations, RRA E30-1.]

**FORM 10**

(Regulation 11(3))

**Index Book**

[Use Form 10 of the Election Registration Regulations, RRA E30-1.]

**FORM 11**

(Regulation 11(4))

**Copy of Entry Made in Index Book**

[Use Form 11 of the Election Registration Regulations, RRA E30-1.]

**FORM 12**

(Regulation 27(12))

**Certificate of Provisional Registration**

[Form 12 of the Election Registration Regulations, RRA E30-1.]

**FORM 13**

(Regulation 14)

**Application for Appointment of Scrutineers**

[Form 13 of the Election Registration Regulations, RRA E30-1.]

**FORM 14**

(Regulation 16)

**Appointment of a Scrutineer**

[Form 14 of the Election Registration Regulations, RRA E30-1.]

**FORM 15**

(Regulations 17 and 56)

**Oath/Affirmation of Scrutineer**

[Use Form 15 of the Election Registration Regulations, RRA E30-1.]

**FORM 16**

(Regulations 21(2)(a) and 22(2))

**Certificate of Enumerator**

[Use Form 16 of the Election Registration Regulations, RRA E30-1.]

**FORM 17**

(Regulation 24)

**Revision Notice**

[Use Form 17 of the Election Registration Regulations, RRA E30-1]

**FORM 18**

(Regulation 29(2))

**Revision Notice (Quarterly List of Voters)**

[Use Form 18 of the Election Registration Regulations, RRA E30-1.]

**FORM 19**

(Regulation 30(7))

**Revision Notice (Preliminary List of Voters)**

[Use Form 19 of the Election Registration Regulations, RRA E30-1.]

**FORM 20**

(Regulations 25 and 56)

**Oath/Affirmation of Enumerator upon Completion of his Work**

[Use Form 20 of the Election Registration Regulations, RRA E30-1.]

**FORM 21**

(Regulations 31 and 34(1))

**Notice of Claim**

[Use Form 21 of the Election Registration Regulations, RRA E30-1.]

**FORM 22**

(Regulations 31, 34(3) and 34(7))

**Notice of Claim**

[Form 22 of the Election Registration Regulations, RRA E30-1.]

**FORM 23**

(Regulations 31, 36(3), 38(1) and 38(3))

**Notice of Objection**

[Form 23 of the Election Registration Regulations, RRA E30-1.]

**FORM 24**

(Regulations 31, 33(1)(a), and 33(2)(a))

**Notice of Election of Residence**

[Use Form 24 of the Election Registration Regulations, RRA E30-1.]

**FORM 25**

(Regulations 31, 33(1)(b) and 33(2)(b))

**Notice of Mis-spelt Name**

[Use Form 25 of the Election Registration Regulations, RRA E30-1.]

**FORM 26**

(Regulations 36(5) and 38(5))

**Notice to Persons Objected to**

[Use Form 25 of the Election Registration Regulations, RRA E30-1.]

**FORM 27**

(Regulations 36(5) and 38(5))

**NOTICE OF HEARING OF OBJECTION**

[Use Form 27 of the Election Registration Regulations, RRA E30-1.]

**FORM 28**

(Regulation 35)

**List of Claims**

[Use Form 28 of the Election Registration Regulations, RRA E30-1.]

**FORM 29**

(Regulations 37 and 39)

**List of Objections**

[Use Form 29 of the Election Registration Regulations, RRA E30-1.]

**FORM 30**

(Regulation 40(1))

**Notice of Insertion or Correction**

[Use Form 30 of the Election Registration Regulations, RRA E30-1.]

**FORM 31**

(Regulation 43(1) and (2))

**Notice of Intention to Make Corrections or Insertions**

[Use Form 31 of the Election Registration Regulations, RRA E30-1.]

**FORM 32**

(Regulations 45(1)(a) and 48(1)(a))

**Revised Preliminary List of Voters**

[Use Form 32 of the Election Registration Regulations, RRA E30-1.]

**FORM 33**

(Regulation 46(a))

**Revised Quarterly List of Voters**

[Use Form 32 of the Election Registration Regulations, RRA E30-1.]

**FORM 34**

(Section 8(4))

**Oath/Affirmation of Returning Officer**

[Use Form 2 in the Elections Act, RSA c E30.]

**FORM 35**

(Section 6(6))

**Oath/Affirmation of Registration Officer**

[Use Form 1 in the Elections Act, RSA c E 30.]

**FORM 36**

(Section 33)

**Application for Transfer of Registration**

[Use Form 8 in the BVI Elections Act, 1994.]

**FORM 37**

(Section 42(3))

**Voter Registration Card**

[Adapt Form 9 of the BVI Elections (Amendment) Act, 2007.]



**FORM 38**

(Section 42(7))

**APPLICATION FOR A DUPLICATE VOTER REGISTRATION CARD**

[Adapt Form 9B of the BVI Elections (Amendment) Act, 2007.]

**FORM 39**

(Section 45)

**Writ of Election**

[Use Form 3 in the Elections Act, RSA c E30.]

**FORM 40**

(Section 46(1))

**Notice of Nomination Day**

[Use Form 4 from in the Elections Act, RSA c E30.]

**FORM 41**

(Section 46(3) and (5))

**Nomination Paper**

[Use Form 5 in the Elections Act, RSA c E30 amended in the first line to give the alternative, "local electoral district/island-wide electoral district".]

**FORM 42**

(Section 50(5))

**Return of Uncontested Election**

[Use Form 6 in the Elections Act, RSA c E30.]

**FORM 43**

(Section 52(3))

**Oath/Affirmation of Presiding Officer**

[Use Form 8 in the Elections Act, RSA c E30.]

**FORM 44**

(Section 53(2))

**Oath/Affirmation of Poll Clerk**

[Use Form 9 in the Elections Act, RSA c E30.]

**FORM 45**

(Section 55(4)(e))

**Directions for the Guidance of Voters**

[Use Form 18 in the BVI Elections Act, 1994, combined with Form 10 in the Elections Act, RSA c E30.]

**FORM 46**

(Sections 57(2))

**Ballot Paper**

[Use BVI Form No 19 in the BVI Elections Act, 1994, with a perforation to provide a separate ballot for island-wide elections.]

**FORM 47**

(Section 66(1))

**Oath/Affirmation of Identity of a Voter Receiving a Ballot Paper after Another has Voted in his Name.**

[Use Form 7 in the Elections Act, RSA c E30.]

**FORM 48**

(Section 2)

**Poll Book**

[Use Form 12 in the Elections Act, RSA c E30.]

**FORM 49**

(Section 66(3))

**Oath/Affirmation of Voter Incapable of Voting without Assistance by Reason of Physical Incapacity**

[Use Form 15 in the Elections Act, RSA c E30.]

**FORM 50**

(Section 66(3))

**Oath/Affirmation of Blind or Illiterate Voter Incapable of Voting without Assistance**

[Use Form 16 in the Elections Act, RSA c E30.]

**FORM 51**

(Section 66(1) and (5))

**Oath/Affirmation of Friend of Blind or Illiterate Voter**

[Use Form 17 in the Elections Act, RSA c E30.]

**FORM 52**

(Section 66(1) and 67(1))

**Oath/Affirmation that the Voter Is the Person Intended to Be Referred to in the List of Voters.**

[Use Form 18 in the Elections Act, RSA c E30.]

**FORM 53**

(Section 67(2))

**Oath/Affirmation of Qualification of Voter**

[Use Form 19 in the Elections Act, RSA c E30.]

**FORM 54**

(Section 68(2))

**Application to Be Treated as a Voter of an Advance Poll**

[Use Form 27 in the BVI Elections Act, No 16 of 1994.]

**FORM 55**

(Section 72(1(g))

**Ballot Paper and Ballot Box Account**

[Use Form 27A in the BVI Elections (Amendment) Act, No 14 of 2011.]

**FORM 56**

(Section 70(2))

**Oath/Affirmation of Agent of a Candidate**

[Use Form 20 in the Elections Act, RSA c E30.]

**FORM 57**

(Section 71(3))

**Oath/Affirmation of Messenger Sent to Collect Ballot Boxes.**

[Use Form 21 in the Elections Act, RSA c E30.]

**FORM 58**

(Section 72(8))

**Request for Recount**

[Use Form 30 in the BVI Elections Act, No 16 of 1994.]

**FORM 59**

(Section 72(9)(c))

**Statement of Poll**

[Use Form 30A in the BVI Elections (Amendment) Act, No 14 of 2011.]

**FORM 60**

(Section 75(1))

**Return after Poll Has Been Taken**

[Use Form 22 in the Elections Act, RSA c E30.]

**FORM 61**

(Section 47(1))

**Certified Joint Statement of Candidature**

[Use Schedule 1 to the House of Assembly Regulations, RRA E30-2.]

**FORM 62**

(Section 47(2))

**Symbols to be Used on Ballot Paper**

[Use Schedule 2 of the House of Assembly Regulations, RRA E30-2.]

**FORM 63**

(Regulation 27(9))

**Notice of disallowance**

[Use Form in the

.]

**FOURTH SCHEDULE**  
**ELECTION PETITION RULES AND FORMS<sup>211</sup>**  
**TABLE OF CONTENTS**

**SECTION**

1. Interpretation
  2. The petition
  3. Particulars of election offence
  4. Petitioner to give address for service
  5. Presentation of petition
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- APPENDIX:           Forms

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<sup>211</sup> These are the present House of Assembly (Election Petition) Rules, RRA E30-9.

## **Interpretation**

1. In these Rules—

“ Act” means the Elections Act;

“corrupt practice” means bribery, treating, undue influence, personation or any other offence defined or recognised as a corrupt practice by the laws of Anguilla;

“Court of Appeal” means the Court of Appeal of the Eastern Caribbean Supreme Court established by the Supreme Court Order 1967;

“court office” means the Registry of the High Court;

“election petition” or “petition” means a petition complaining of an undue return or undue election of a member of the House of Assembly presented to the High Court under the Elections Act and of these Rules;

“petitioner” means a person who presents a petition to the High Court under these Rules;

“respondent” means a person against whom a petition is presented to the High Court.

## **The petition**

2. (1) A petition shall be in the form specified as Form 1 of the Appendix and,

(a) be signed by the petitioner or, if more than one, by all the petitioners;

(b) state the right of the petitioner to petition within section 67(2) of the Act;

(c) state the date and result of the election to which the petition relates;

(d) state the grounds on which relief is sought, setting out with sufficient particularity the facts relied on to sustain the prayer, but not the evidence by which they are to be proved;

(e) be divided into consecutively numbered paragraphs, each of which, as much as possible, shall be confined to a distinct portion of the subject; and

(f) conclude with a prayer, setting out particulars of the relief sought, for instance, that a specified person should be declared duly returned or elected, or that the election should be declared void, or that a return may be enforced.

(2) Evidence shall not be stated in the petition.



### **Particulars of election offence**

3. (1) The judge may order, on an application in the manner prescribed as Form 2 in the Appendix, that such particulars as may be necessary to prevent surprise and unnecessary expense and to ensure a fair and effectual trial in the same way as in ordinary proceedings in the Court and on such terms as to costs and otherwise be delivered by the petitioner.

(2) Where an allegation is made against a person for the commission of an election offence under the Act, that allegation shall be made in the manner prescribed in Form 3 of the Appendix and the particulars shall include,

- (a) the name of the person in the petition against whom the alleged election offence was committed;
- (b) the name, address, telephone number and occupation on the register of the person who is alleged to have committed the election offence; and
- (c) the details of the alleged election offence including,
  - (i) the nature of the offence;
  - (ii) the time of the commission of the offence; and
  - (iii) the place where the offence was committed.

(3) In any case in which the judge orders that particulars of any allegation made in a petition be delivered to the respondent, he may fix the time within which the particulars shall be delivered and may also order that the petitioner, at the trial of the petition, may be precluded from going into any case in respect of which the particulars have not been duly delivered, unless it is otherwise ordered.

### **Petitioner to give address for service**

4. The petitioner shall in his petition give the name and address of a legal practitioner whom he authorises to act on his behalf, or state that he acts for himself, and in either case give an address for service within 3 miles of the office of the Registrar.

### **Presentation of petition**

5. (1) A petition shall be presented in accordance with section 68 of the Act.

(2) The petitioner shall file the petition along with 3 copies of it at the court office and the Registrar or his deputy or clerk shall give a receipt for it.

## **Publication of notice of the presentation of the petition**

**6.** *The Registrar shall, on presentation of the petition, immediately cause a notice of the presentation of the petition in the manner prescribed in Form 4 of the Appendix, to be published in the Gazette and in a newspaper of general circulation in Anguilla.*

## **Service of petition**

**7.** (1) The petitioner shall, within 10 days after the presentation of the petition, serve the petition on the respondent by delivering a notice of the presentation of the petition together with a copy of the petition to the respondent personally.

(2) Notwithstanding subsection (1), a judge may,

(a) on an application by the petitioner within 14 days of the presentation of the petition; and

(b) supported by affidavit showing what has been done,

and on being satisfied that all reasonable effort has been made to effect personal service and cause the matter to come to the knowledge of the respondent, order that what has been done shall be considered sufficient service, subject to any conditions which he may think fit to impose.

(3) Where a respondent is evading service, the petitioner may apply, in the manner prescribed on Form 5 in the Appendix, to the judge, for an order deeming that a notice stating that the petition has been presented, the name of the petitioner, the prayer and the nature of the proposed security,

(a) posted in the office of the Registrar; or

(b) published in a newspaper of general circulation in Anguilla,

is personal service on the respondent.

(4) The application under subsection (3) shall be supported by evidence on affidavit.

(5) A respondent shall, within 10 days after service on him of the notice of the petition, lodge with the Registrar and serve on the petitioner a statement of particulars of an address for service similar to those required under section 4 to be stated by a petitioner, and he shall state the said particulars in any application made by him for the purpose of objecting to the security given by the petitioner or otherwise.

## **Security for costs**

**8.** (1) Where security for the payment of all costs, charges and expenses and any recognizance entered into pursuant to sections 68(1)(c) and (d) are made same

shall be entered on Form 6 of the Appendix and shall contain the name and usual place of abode of each surety with sufficient description as shall enable him to be found or ascertained.

(2) Within 3 days after the giving of security as required by this section, notice of the nature of the security given shall be served by the petitioner on the respondent.

(3) When the security is given wholly or partly by recognizance, it is lawful for the respondent within 10 days from the date of service on him of the notice to object to the recognizance on the ground that,

- (a) one or more of the sureties is insufficient;
- (b) a surety is dead;
- (c) a surety cannot be found or ascertained for want of sufficient description in the recognizance; or
- (d) a person named in the recognizance has not duly acknowledged the same.

(4) An objection to the security shall be made by application, in the manner prescribed in Form 7 of the Appendix, before a judge supported by affidavit of the facts relied on, but the judge may require the person giving evidence on affidavit to attend for personal examination.

(5) The application shall be made with not less than 4 days notice to the petitioner and the costs of the application shall be in the discretion of the judge who may decide which party shall pay them.

(6) The petitioner shall pay the costs of hearing and deciding an objection on the ground of insufficiency of a security unless at the time of leaving the recognizance with the Registrar the petitioner also left with the Registrar an affidavit sworn by each surety before a justice of the peace, or other person duly authorised to administer oaths, that he is possessed of immovable property of the value of double the amount for which he is bound by the recognizance, after satisfying all other debts and liabilities due to other persons.

### **Removal of objection where security declared insufficient**

**9.** (1) If on an application under section 8, an order, in the manner prescribed as Form 8 in the Appendix, is made declaring the security insufficient and the objection allowed, the petitioner may, within a time not exceeding 10 days as may be ordered by the judge before whom the application is heard, deposit with the Court a sum of money as the judge may direct for the purpose of making the security sufficient.

(2) If the petitioner does not deposit the sum of money as directed by the order of the judge, no further proceedings shall be taken on the petition and the application stands dismissed.

### **When petition at issue**

**10.** If on the application under section 8, an order in the manner prescribed as Form 8 in the Appendix is made declaring the security sufficient, or if no objection is made to the sufficiency of the security within the time limited by these Rules for making the objection, the petition shall be at issue.

### **Amendment of petition**

**11.** (1) A petition which has been presented,  
(a) questioning a return or election other than on an allegation of a corrupt practice; or  
(b) questioning the return or election on an allegation of a corrupt practice,

may be amended with the leave of the Court.

(2) An application for leave to amend shall be made to the Court in the manner prescribed as Form 9 in the Appendix and in accordance with the Act.

### **Withdrawal of petition**

**12.** (1) A petition may be withdrawn with the leave of the Court.

(2) No application under subsection (1) shall be made for the withdrawal of a petition until the petitioner has given notice, in the manner prescribed as Forms 10 and 11 in the Appendix, of his intention to the Registrar and the respondent, and the Registrar shall immediately cause the notice to be published in the *Gazette* and in a newspaper of general circulation in Anguilla and an application for leave shall be made in the manner prescribed as Form 12 in the Appendix.

(3) Where there is more than one petitioner, no application to withdraw a petition shall be made except with the consent of all the petitioners.

(4) Before leave for the withdrawal of a petition is granted,

(a) a party to the petition and his legal practitioner; and

(b) the election agents of the parties who were candidates at the election, shall produce affidavits to the effect stated in subsection (5), but the Court may, on cause shown, dispense with the affidavit of a particular person if on special grounds it appears to the Court just to do so.

(5) Each affidavit shall state that, to the best of the deponent's knowledge and belief,

(a) no agreement or terms of any kind whatsoever has, or have been, made; and

(b) no undertaking has been entered into,

in relation to the withdrawal of the petition, but if any lawful agreement has been made with respect to the withdrawal of the petition, the affidavit shall set out that agreement and shall make the foregoing statement subject to what appears from the affidavits.

(6) The affidavits of the applicant and his legal practitioner shall further state the ground on which the petition is sought to be withdrawn.

(7) No person shall make any agreement or terms, or enter into any undertaking, in relation to or for the withdrawal of a petition in consideration,

(a) of any payment;

(b) that the seat shall at any time be vacated; or

(c) of the withdrawal of any other petition.

(8) A person who contravenes this section commits an offence and is liable to a fine of \$500.

### **Substitution of a new petitioner**

**13.** (1) A person who might have been a petitioner in respect of the election to which the petition relates may, within 5 days after the publication by the Registrar in the *Gazette* of a copy of the notice of application for leave to withdraw the petition, apply to the Court, in the manner prescribed as Form 13 in the Appendix, to be substituted as a petitioner for the petitioner who desires to withdraw the petition, and the judge may at the hearing of the application, if he thinks fit, substitute the applicant as a petitioner.

(2) Where in the opinion of the judge, the proposed withdrawal of a petition is induced by any corrupt bargain or consideration or is the result of any agreement, terms or undertaking prohibited by these Rules, he may, by order, direct that the security given on behalf of the original petitioner shall remain as security for any costs that may be incurred by the substituted petitioner.

(3) If no order under subsection (2) is made with respect to the security given on behalf of the original petitioner, security to the same amount as would be required in the case of an original petitioner and subject to like conditions, shall be given on behalf of the substituted petitioner within 5 days after the order of substitution and before he takes any step in the proceedings.

(4) Subject to this section, a substituted petitioner shall stand in the same position, as nearly as may be, and be subject to the same liabilities, as the original petitioner.

(5) If a petition is withdrawn, the substituted petitioner is liable to pay the costs of the respondent.

### **Abatement of petition**

**14.** (1) A petition shall be abated by the death of a sole petitioner or the survivor of several petitioners.

(2) The abatement of a petition shall not affect the liability of the petitioner's legal personal representative to pay the costs previously incurred.

(3) On the abatement of a petition, a party or person interested in the petition shall give to the Registrar notice of the abatement, in the manner prescribed as Form 14 in the Appendix and the Registrar shall immediately cause the notice to be inserted in the *Gazette* and in a newspaper of general circulation in Anguilla.

(4) Within one month after publication of the notice in the *Gazette* a person who might have been a petitioner in respect of the election to which the petition relates may apply to the Court, pursuant to section 13, to be substituted as a petitioner.

(5) The judge may, if he thinks fit, substitute as a petitioner the applicant on whose behalf security to the same amount as is required in the case of an original petition is given and the security shall be subject to the same objection as the security given in an original petition.

### **Addition or substitution of respondent**

**15.** (1) If, before the trial of a petition,

(a) the respondent dies, then a person entitled to be a petitioner in respect of the election to which the petition relates may give notice, in the manner prescribed in Form 15 of the Appendix, of the death of the respondent by publication in the *Gazette* and in a newspaper of general circulation in Anguilla; or

(b) the respondent gives notice, in the manner prescribed in Form 16 of the Appendix, to the Registrar and to the petitioner that he does not intend to oppose the petition, the Registrar shall give notice of the intention of the respondent by publication in the *Gazette* and in a newspaper of general circulation in Anguilla.

(2) Within 21 days after publication of the notice under subsection (1) in the *Gazette*, a person may apply, in the manner prescribed as Form 17 of the Appendix, to the Court to be admitted as a respondent to oppose the petition, and

the person shall be admitted accordingly either with the respondent, if there be a respondent, or in place of the respondent.

(3) Any number of persons not exceeding 3 may be admitted.

### **Notice of intention not to oppose petition**

**16.** A respondent who does not intend to oppose the petition shall, not less than 7 days before the day fixed for the trial, serve notice in the manner prescribed in Form 17 of the Appendix to that effect on the petitioner and all other parties.

### **Respondent not opposing not to appear as party**

**17.** A respondent who has given the prescribed notice that he does not intend to oppose the petition shall not appear or act as a party against the petition in any proceedings on the petition.

### **Several petitions as to the same election**

**18.** Where more than one petition relating to the same election or return is presented, all the petitions shall be dealt with as one petition, in the manner and on the terms, as the judge directs.

### **Notice of recrimination when petition complains of undue return and claims seat**

**19.** (1) When a petition complains of an undue return and claims the seat for some person other than the person returned, the respondent may, within 10 days after the service of the notice of the petition, give notice in the manner prescribed in Form 18 of the Appendix to the petitioner that he intends to give evidence to prove that the person on whose behalf the seat is claimed was not duly elected.

(2) The grounds on which a respondent intends to complain that a person on whose behalf the seat is claimed was not duly elected shall be set out in the notice and the Rules applicable to a petition and the particulars of charges made in the petition shall apply to every notice.

### **Returning officer if complained of to be respondent**

**20.** Where a petition complains of the conduct of a returning officer, the returning officer shall for the purposes of these Rules, be the respondent except where there is a substitution of a respondent in his place.

### **Petition complaining of no return**

**21.** A petition complaining of no return may be presented to the Court, and is deemed to be an election petition, and the judge may,

(a) make an order on the petition as he thinks expedient for compelling a return to be made; or

- (b) allow the petition to be heard in a manner provided with regard to petitions.

### **Mode of trial of petitions**

**22.** The following provisions apply to the trial of a petition,

- (a) the trial shall take place in open court at a time as a judge may appoint, not being less than 7 days after notice of trial, in the manner prescribed as Form 19 in the Appendix, has been given to the parties and published in the *Gazette* and in a newspaper of general circulation in Anguilla;
- (b) the judge may adjourn the trial from time to time, but the trial of every petition so far as practicable, and consistent with the interests of justice in respect of the trial, shall be continued from day to day on lawful days until its conclusion;
- (c) the judge may make a special report to the Governor upon any matter arising in the course of the trial, an account of which in his judgment ought to be submitted;
- (d) where it appears to the judge, on application, in the manner prescribed as Form 20 in the Appendix, by either party or without the application, that the case raised by the petition can be conveniently stated as a special case, he may direct the same to be stated by the petitioner and the respondent accordingly, and any special case shall, as far as may be, be heard before the Court, and the decision of the Court shall be the decision on the petition;
- (e) in case the petitioner and the respondent differ on the stating of the special case, the Court may refer the same to be settled by a legal practitioner conferred with the rank of Queen's Counsel or Senior Counsel;
- (f) a copy of the case stated as settled shall be sent to the parties within 7 days of settlement of the case stated;
- (g) the court office shall give the parties at least 14 days notice of the date, time and hearing of the special case;
- (h) the judge shall certify to the Governor his determination in reference to a special case.

### **Power to reserve question of law for Court of Appeal**

**23.** (1) If it appears to the judge, on the hearing of any election petition or any special case, that any question of law requires further consideration by the Court of Appeal, he may postpone the hearing, or the granting of any certificate to the Governor, until the determination of the question by the Court of Appeal and for this purpose may reserve any question of law for the determination of the Court of Appeal.



(2) A reference to the Court of Appeal under subsection (1) shall be by way of a special case stated under section 22.

### **Evidence of corrupt practice receivable before proof of agency**

**24.** On the trial of a petition, unless the judge otherwise directs, any charge of a corrupt practice may be examined by the Court, and evidence in relation to the charge received, notwithstanding that any proof has been given of agency on the part of any candidate in respect of the corrupt practice.

### **Witnesses**

**25.** (1) Witnesses shall be summoned and sworn in the same manner, as nearly as circumstances admit, as in an action tried in a civil trial.

(2) At the trial, the Court may, by order under the hand of the judge, require a person who appears to him to have been concerned in the election to attend as a witness, and a person wilfully refusing to obey that order shall be guilty of contempt of court.

(3) A witness may, after his examination by the Court, be cross-examined by or on behalf of the petitioner and respondent, or either of them.

(4) A person called as a witness in respect of an election before the Court shall not be excused from answering any question relating to any offence at or connected with the election, on the ground of privilege.

(5) Notwithstanding subsection (4),

(a) a witness who answers truly all questions which he is required by the Court to answer shall in the discretion of the Court be eligible to receive a certificate of indemnity under the hand of the judge stating that the witness has so answered; and

(b) an answer by a person to a question put by or before the Court is not admissible in evidence against that person in civil or criminal proceedings, except in the case of any criminal proceeding for perjury in respect of the evidence.

(6) The reasonable expenses incurred by a person in appearing to give evidence at the trial of a petition, if allowed to the person by order of the judge, is payable in the first instance by the party who calls him as a witness and the amount payable shall be ascertained and certified by the Registrar.

(7) The expenses under subsection (6) may be included in the costs of the petition and shall be paid by the party directed to pay those costs.

(8) The expenses of a witness called and examined by the judge are deemed to be costs of the petition and shall be paid as directed by the order of the judge.

### **General costs of petition**

**26.** (1) Except where specifically provided for in these Rules, all costs, charges and expenses of and incidental to the presentation of a petition, or of any

consequent proceedings shall be in the discretion of the Court and shall be defrayed by the parties to the petition in a manner and in proportions as the Court may determine.

(2) The Court may disallow any costs, charges or expenses which may, in its opinion, have been caused by,

- (a) vexatious conduct;
- (b) unfounded allegations; or
- (c) unfounded objections,

on the part of either the petitioner or the respondent, and shall have regard to the discouragement of any needless expense by throwing the burden of defraying the same on the parties by whom it has been caused, whether or not the parties are on the whole successful.

(3) The rules and regulations of the Court with respect to costs to be allowed in actions, causes and matters in the Court shall, in principle and so far as practicable, apply to the costs of election petitions and connected proceedings and the amount of the costs may be fixed by the judge or may be directed to be assessed.

(4) Where the petitioner is ordered to pay any costs and he fails to pay the costs within 14 days from the date of the order of the Court,

- (a) the Registrar shall pay the costs out of any money deposited with the Court as security under these Rules and execution may be issued against the petitioner and the sureties jointly and severally for any balance not covered by the deposit; or
- (b) where security has been given by recognizance, the Registrar shall, on an affidavit of the respondent stating,
  - (i) the amount of the costs directed to be paid by the petitioner; and
  - (ii) that neither the petitioner nor any of the sureties has paid them within 14 days after the order to pay the same,

certify the recognizance to be forfeited.

(5) The Court shall immediately issue execution for the recovery of the amount of the costs ordered to be paid against the petitioner and the sureties jointly and severally to the extent of the amount for which they are bound by the recognizance, but the petitioner is always liable to pay the full amount of the costs.

(6) If the security given by the petitioner is in the form of money deposited with the Court, the petitioner is entitled to a refund of a portion of the money exceeding the amount of the costs ordered to be paid by him.

(7) If a respondent who is ordered to pay any costs to the petitioner fails to do so within 14 days from the date of the order directing the payment, execution shall immediately be issued out of the Court for the recovery of the amount of costs.

(8) Execution shall be levied in accordance with the law governing execution in civil actions in the Court.

### **Application of Eastern Caribbean Supreme Court Civil Procedure Rules 2000**

**27.** A judge may direct, in any matter not provided for by the Act or by these Rules, that the practice and procedure set out in the Eastern Caribbean Supreme Court Civil Procedure Rules 2000, relating to the service of documents other than the election petition and the conduct of a civil trial may be applied.

### **Costs**

**28.** The costs of publication of the notice of the presentation of the petition in section 6 and of any other matter required to be published by the Registrar under these Rules shall be paid to the Registrar before the publication by the petitioner or other person moving the matter in the first instance and shall form part of the general cost of the petition.

### **Citation**

**29.** These Rules may be cited as the House of Assembly (Election Petition) Rules.

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**APPENDIX**

**FORMS**

**FORM 1**

(Rule 2)

**Petition**

[Form 1 of the Election Petition Rules RRA, E030.9]

**FORM 2**

(Rule 3)

**Application for Particulars**

[Form 2 of the Election Petition Rules RRA, E030.9]

**FORM 3**

(Rule 3)

**Particulars Delivered**

[Form 3 of the Election Petition Rules RRA, E030.9]

**FORM 4**

(Rule 6)

**Notice of Presentation of Petition and of the Nature of the Security**

[Form 4 of the Election Petition Rules RRA, E030.9]

FORM 5

(Rule 7)

**Application for Substituted Service**

[Form 5 of the Election Petition Rules, RRA, E030.9]

FORM 6

(Rule 8)

**Recognizance Giving Security for Costs under Section 8**

[Form 6 of the Election Petition Rules, RRA, E030.9]

FORM 7

(Rule 8)

**Application Objecting to Security**

[Form 7 of the Election Petition Rules, RRA, E030.9]

FORM 8

(Rules 9, 10)

**Order Upon an Application objecting to Security**

[Form 8 of the Election Petition Rules, RRA, E030.9]

FORM 9

(Rule 11)

**Application to Amend Petition**

[Form 9 of the Election Petition Rules, RRA, E030.9]

FORM 10

(Rule 12)

**Notice to Registrar and Respondent of Application for Leave to Withdraw a  
Petition**

[Form 10 of the Election Petition Rules, RRA, E030.9]

FORM 11

(Rule 12)

**Notice to Public of Application for Leave to Withdraw Petition**

[Form 11 of the Election Petition Rules, RRA, E030.9]

FORM 12

(Rule 12)

**Application for Leave to Withdraw Petition**

[Form 12 of the Election Petition Rules, RRA, E030.9]

FORM 13

(Rule 13)

**Application for Substitution of a Petitioner in Place of a Deceased Petitioner**

[Form 13 of the Election Petition Rules, RRA, E030.9]

FORM 14

(Rule 14)

**Notice of Abatement of Petition**

[Form 14 of the Election Petition Rules, RRA, E030.9]

FORM 15

(Rule 15)

**Notice to be Published of Death of the Respondent**

[Form 15 of the Election Petition Rules, RRA, E030.9]

FORM 16

(Rule 15)

**Notice to be Published by Respondent of Intention not to Oppose the Petition**

[Form 16 of the Election Petition Rules, RRA, E030.9]

FORM 17

(Rules 15 and 16)

**Application to be Admitted as a Respondent to Oppose the Petition**

[Form 10 of the Election Petition Rules, RRA, E030.9]

FORM 18

(Rule 19)

**Notice of Recriminatory Grounds**

[Form 18 of the Election Petition Rules, RRA, E030.9]

FORM 19

(Rule 22)

**Notice of Trial**

[Form 19 of the Election Petition Rules, RRA, E030.9]

FORM 20

(Rule 22)

**Application to turn Petition into Special Case**

[Form 20 of the Election Petition Rules, RRA, E030.9]



Passed by the House of Assembly this

....., Speaker.

.....Clerk of the House of Assembly.

## DRAFT NEW ELECTORAL BOUNDARIES COMMISSION BILL

### EXPLANATORY MEMORANDUM

In carrying out its mandate from Executive Council to review all previous proposals for electoral reform, and to produce proposals for reforming Anguilla's law and procedure, the Constitutional and Electoral Reform Committee determined that it is necessary to set up an Electoral Boundaries Commission to review the electoral boundaries into which Anguilla is divided. In view of the proposal in the draft new Constitution and in the new Elections Act that Anguilla be divided into nine (9) local electoral districts and four (4) Island-wide electoral districts, it is necessary that a Boundaries Commission be set up to carry out that task.

The following is a summary of the proposals that are contained in the draft Electoral Boundaries Commission Bill.

1. The Bill is based on the Cayman Islands constitutional provision, which appears to us to be adequate for our purposes.
2. It is a short Bill consisting of a mere three sections.
3. Section 1 is the short title and commencement.
4. Section 2 provides for the establishment of the Commission. The Governor appoints the Chairman (who must not be a member of the legislature or a public officer). The Chief Minister and the Leader of the opposition each recommend the remaining two members.
5. Section 2 also provides for the Commission, with the permission of the Governor, to confer powers and impose duties on any public officer. It is envisaged that by this provision the Commission may enlist the professional and expert advice of demographic and geographic experts in the public service such as the Statistics Department and the Lands and Surveys Department in mapping out nine new

sets of boundaries of district constituencies with approximately equal populations. Members of the public will also be invited to participate by sharing their views.

6. The final section 3 provides for the Commission to submit its report to the Governor and to the House of Assembly, and for the Chief Minister to propose to the House the adoption of the report. Once the House approves the report, the draft Elections Bill can then be completed by inserting into its First Schedule the new boundaries of the nine local electoral districts. The proposed new Elections Bill can then be submitted to the House of Assembly for passage into law. In that way, the next general election will be contested on the basis of nine local electoral districts and four Island-wide electoral districts.

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## REVISED STATUTES OF ANGUILLA

### A BILL FOR AN ELECTORAL BOUNDARIES COMMISSION ACT

An Act to establish an Electoral Boundaries Commission to prepare a Report for submission to the House of Assembly providing for the division of the island of Anguilla into nine approximately equal local district constituencies and to declare the boundaries of the new local district constituencies, and for purposes connected therewith and incidental thereto.

[ Gazetted ..... ]

ENACTED by the House of Assembly of Anguilla as follows -

#### **Short title and commencement**

1. This Act may be cited as the Electoral Boundaries Commission Act and shall come into operation on such date as the Governor, by proclamation published in the Gazette, shall appoint.

#### **Appointment of Commission**

2. (1) An Electoral Boundary Commission shall be appointed from time to time at such time as the Governor, acting after consultation with the Chief Minister and the Leader of the Opposition, may determine; but -

- (a) the first such Commission shall be appointed as soon as practicable after the date of commencement of this Act; and
- (b) each subsequent Commission shall be appointed not later than eleven years after the last Commission submitted its report under section 1

(2) An Electoral Boundary Commission shall consist or –

- (a) a Chairman who shall be appointed by the Governor, acting in his discretion;
- (b) one member appointed by the Governor, acting in accordance with the advice of the Chief Minister; and

- (c) one member appointed by the Governor, acting in accordance with the advice of the Leader of the opposition.

(3) A person shall not be qualified to be appointed as the Chairman of an Electoral Boundary Commission if he or she is a member of the House of Assembly or a public officer.

(4) The Chairman of an Electoral Boundary Commission shall vacate his or her office –

- (a) on the day following the date of submission under section 3 of the report of the Commission;
- (b) if he or she becomes a member of the House of Assembly or a public officer; or
- (c) if the Governor, acting in his or her discretion, directs that he or she shall be removed from office for inability to discharge the functions of that office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour.

(5) Any other member of an Electoral Boundary Commission shall vacate his or her office –

- (a) on the day following the date of submission under section 3 of the Report of the Commission; or
- (b) if his or her appointment is revoked by the Governor, acting, in the case of a member appointed under subsection (2)(b), in accordance with the advice of the Chief Minister or, in the case of a member appointed under subsection (2)(c), in accordance with the advice of the Leader of the Opposition.

(6) An Electoral Boundary Commission may regulate its own procedure and, with the consent of the Governor, confer powers and impose duties on any public officer or on any authority of the Government for the purpose of the discharge of its functions.

(7) For the purpose of the discharge of its functions, an Electoral Boundary Commission shall invite views from members of the public and may seek such advice as it considers appropriate.

(8) An Electoral Boundary Commission may act notwithstanding any vacancy in its membership (including any vacancy not filled when appointments of members are first made) and its proceedings shall be valid even though some person who was not entitled to do so took part in them, but any decision of the Commission shall require the concurrence of not less than two members of the Commission.

(9) In the exercise of its functions under this Act, an Electoral Boundary commission shall not be subject to the direction or control of any other person or authority.

### **Review and alteration of electoral district boundaries**

3. (1) An Electoral Boundary Commission shall, as soon as practicable after its appointment, review the boundaries of the electoral districts into which Anguilla is divided and, taking into account the proposed change from seven to nine in the number of local electoral districts, shall submit a report to the Governor and the House of Assembly containing its recommendations for any changes in the number and boundaries of the electoral districts.

(2) In preparing its report under this section, the Commission shall –

- (a) take no account of the racial distribution of voters within Anguilla;
- (b) take into account the natural boundaries within Anguilla;
- (c) have regard to existing electoral districts; and
- (d) subject to the foregoing provisions of this subsection, ensure that so far as reasonably practicable, across all electoral districts there will be an equal ratio between the number of elected members of the Legislative Assembly representing each electoral district and the number of persons qualified to be registered as voters under section 43 of the Constitution of Anguilla, 1982 in that district.

(3) As soon as may be after the Commission has submitted a report under subsection (1), the Chief Minister shall lay before the House of Assembly for its approval the draft of an order by the Governor for giving effect, whether with or without modifications, to the recommendations contained in the report, and that draft may make provision for any matters which appear to the Chief Minister to be incidental to or consequential upon the other provisions of the draft.

(4) Where any draft order laid under this section would give effect to any such recommendations with modifications, the Chief Minister shall lay before the House of Assembly together with the draft a statement of the reasons for the modifications.

(5) If the motion for the approval of any draft order laid under this section is rejected by the House of Assembly or is withdrawn by leave of the Assembly, an amended draft shall be laid without undue delay by the Chief Minister before the Assembly.

(6) If any draft order laid under this section is approved by resolution of the House of Assembly, the Chief Minister shall submit it to the Governor who shall make an order (which shall be published in the Official Gazette) in terms of the draft; and that order shall come into force for the determination of the boundaries of the electoral districts to which it relates upon the next dissolution of the Assembly after it is made.

(7) The question of the validity of any order by the Governor purporting to be made under this section and reciting that a draft of the order has been approved by the House of Assembly shall not be enquired into in any court.

Passed by the House of Assembly this

....., Speaker.

.....Clerk of the House of Assembly.

## **OBJECTS AND REASONS**

1. The Constitutional and Electoral Reform Committee established by Government in September 2015 has now submitted its report and recommendations to the Executive Council.
2. One of the recommendations in the report of the Committee is that the size of the House of Assembly should be increased from the present seven elected members in seven constituencies to nine elected members in nine local electoral districts, together with four members elected at large in four Island-wide electoral districts. The Executive Council has accepted this report and now wishes to give effect to the recommendations by introducing a Bill for a new Elections Act.
3. It is a prerequisite to the division of the island of Anguilla into nine new local electoral districts and to the introduction and passage into law of any new Elections Act that the boundaries of the nine districts be established and inserted into Schedule 1 of the new Elections Act.
4. It is envisaged that, once this Bill is passed, the Governor will establish the Commission in the manner proposed by section 2 of the Bill, and the Commission will seek the professional advice of the Statistics Department and the Department of Lands and Surveys to map out nine new electoral districts which will each have approximately even populations in accordance with section 3 of the Bill, and to report accordingly to the Governor and to the House of Assembly.
5. Following the adoption of the report by the House of Assembly in accordance with section 3 of the Bill, it is anticipated that the new boundaries will be inserted into the First Schedule of the Bill for a new Elections Act which Bill will be submitted to the House of Assembly to be brought into law.
6. Any new general elections that will take place thereafter will be conducted under the new Elections Act with the intent that there shall be nine local electoral district representatives and four Island-wide electoral representatives sitting in the House whether or not any new Constitution has been brought into effect.