
STATUTORY INSTRUMENTS

2020 No. XXXX

CARIBBEAN AND NORTH ATLANTIC TERRITORIES

The Anguilla Constitution Order 2020

Made - - - - *****

Coming into force in accordance with Section 1(2)

CONTENTS

1. Citation, commencement and establishment of the Constitution 5

CONSTITUTION OF ANGUILLA

PREAMBLE

PART 1

PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS

2. Fundamental rights and freedoms of the individual 6
3. Protection of right to life 7
4. Protection of right to personal liberty 7
5. Protection of right of prisoners to humane treatment 8
6. Protection from slavery and forced or compulsory labour 9
7. Protection of freedom of movement 9
8. Protection from torture and inhuman or degrading treatment 10
9. Protection from deprivation of property 10
10. Protection of private and family life and privacy of home and other property 11
11. Provisions to secure protection of law 12
12. Protection of freedom of thought, conscience and religion 14
13. Protection of right to education 14
14. Protection of freedom of expression 15
15. Protection of freedom of assembly and association 15
16. Protection of right to marry 16
17. Protection from discrimination 16
18. Protection of the environment 17
19. Protection of children 17
20. Derogations from fundamental rights and freedoms under emergency powers 18
21. Protection of persons detained under emergency laws 18
22. Enforcement of protective provisions 18

23.	Emergency powers	19
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PART 2 INTERPRETATION

24.	Interpretation	19
25.	References to public office	22
26.	Appointments	22
27.	Re-election or re-appointment	22
28.	Removal from office	22
29.	Resignation	23
30.	Power to amend or revoke instruments	23

PART 3 THE GOVERNOR

31.	The Governor	23
32.	Office of Deputy Governor	23
33.	Acting Governor	24
34.	Functions of Deputy Governor	24
35.	Governor's deputy	25

PART 4 THE EXECUTIVE

36.	Executive authority of Anguilla	25
37.	Cabinet and Government of Anguilla	25
38.	Appointment of Ministers	26
39.	Tenure of office of Ministers	26
40.	Performance of functions of Premier in certain events	27
41.	Assignment of responsibilities to Ministers	27
42.	Attorney-General	28
43.	Director of Public Prosecutions	28
44.	Governor's special responsibilities	29
45.	Exercise of Governor's functions	30
46.	Oaths to be taken by members of Cabinet	31
47.	Summoning of persons to Cabinet	31
48.	Summoning of Cabinet and transaction of business	31
49.	Presiding in Cabinet	32
50.	Cabinet Secretary	32
51.	Public seal	32
52.	Power to constitute offices	32

PART 5 THE PUBLIC SERVICE

53.	Power to appoint, etc., to public offices	33
54.	Pensions: Applicability of pensions law	34
55.	Pensions, etc., charged on revenues of Anguilla	34
56.	Grant and withholding of pension, etc.	34

PART 6
THE LEGISLATURE

57.	Composition of legislature and power to make laws	35
58.	Qualifications for elected membership	35
59.	Disqualifications for elected membership	35
60.	Declaration by candidates for election to Assembly	36
61.	Tenure of office of members of Assembly	36
62.	Vacation of seat on sentence and suspension	37
63.	Temporary members of Assembly	37
64.	Leader of the Opposition	37
65.	Power to provide for a referendum	38
66.	People-initiated referendums	38
67.	Determination of questions as to membership of Assembly	39
68.	Penalty for sitting or voting in Assembly when unqualified	39
69.	Qualification of voters	39
70.	Right to vote at elections	40
71.	Laws as to elections	41
72.	Elected members	41

PART 7
POWERS AND PROCEDURE IN THE HOUSE OF ASSEMBLY

73.	Standing Orders and committees	41
74.	Presiding in Assembly	42
75.	Assembly may transact business notwithstanding vacancies	43
76.	Quorum	43
77.	Voting	43
78.	Summoning of persons to assist Assembly	43
79.	Introduction of bills	43
80.	[Governor's legislative reserved power]	44
81.	Assent to bills	44
82.	Return of bills by Governor	45
83.	[Disallowance of laws]	45
83.	[Pre-legislative controls]	45
84.	Standing Committees	45
85.	Oath of allegiance	46
86.	Privileges of Assembly and members	46
87.	Sessions	46
88.	Prorogation and dissolution	46
89.	General elections	47

PART 8
THE JUDICATURE

90.	Eastern Caribbean Supreme Court	47
91.	Subordinate courts and tribunals	47
92.	Appeals to Her Majesty in Council	47

PART 9
INSTITUTIONS PROTECTING GOOD GOVERNANCE

93.	Electoral District Boundary Commission	48
94.	Review and alteration of electoral district boundaries	48
95.	Public Service Commission	49
96.	Teaching Service Commission	49
97.	Police Service Commission	49
98.	Power to appoint, etc., to offices in the Police Service	50
99.	National Security Commission	51
100.	Financial Services Commission	51
101.	Appointments Commission	52
102.	Judicial and Legal Services Commission	52
103.	Power to appoint, etc., to legal offices	52
104.	Integrity Commission	53
105.	Registration of Interests	54
106.	Anguillian Status Commission	54
107.	Advisory Commission on the Prerogative of Mercy	55
108.	Commissions of Inquiry	56
109.	General provisions regarding Commissions	56
110.	Legislation regarding Commissions	57
111.	Human Rights Commissioner	57
112.	Complaints Commissioner	58
113.	Police Complaints Commissioner	58
114.	Public Procurement Commissioner	58
115.	Freedom of Information Commissioner	59
116.	[Supervisor of Elections]	59
117.	General provisions relating to Commissioners	59
118.	Public assets	60

PART 10
[PUBLIC FINANCE](a)

119.	General principles	61
120.	Taxation	61
121.	Contingent liabilities	62
122.	Consolidated Fund	62
123.	Withdrawal from Consolidated Fund or other public funds	62
124.	Financial year estimates	62
125.	Appropriation Bill	63
126.	Excess expenditure	63
127.	Contingencies	63
128.	Power of Government to borrow or lend	64
129.	Exercise of functions in Part 10 by Governor	65
130.	Appropriations Committee	65
131.	Provision for and funding of institutions protecting good governance	65
132.	Public Accounts Committee	66

(a) This section is still under consideration by Anguilla, but this draft includes a reformulated proposal by the UK.

133. Accounting officers	66
134. Public debt	67
135. Financial control and accounts	67
136. Audit	67
137. Remuneration of Speaker and other members of Assembly	68
138. Remuneration of certain officers	68

PART 11
TRANSITIONAL AND MISCELLANEOUS

139. Meaning of the appointed day	68
140. Revocations	68
141. Existing laws	68
142. Existing offices and officers	69
143. Director of Public Prosecutions	69
144. House of Assembly	69
145. Power reserved to Her Majesty	69

SCHEDULE 1 — Forms of Oaths and Affirmations	70
SCHEDULE 2 — Revocations	70

At the Court at Buckingham Palace, the *** day of ***

Present,

The Queen’s Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred on Her by section 1(2) of the Anguilla Act 1980(a) or otherwise in Her Majesty vested,(b) 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 2020.

(2) This Order shall come into force [on such day as the Governor, acting in his or her discretion, may appoint by Proclamation published in the Gazette],(c) 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 Cabinet shall continue to be called the Executive Council; and
- (b) no person shall be appointed to the office of Cabinet Secretary.

(a) 1980 c.67.

(b) The reference to the West Indies Act 1967 in the previous draft has been removed, as this does not provide the legal authority to make the Order in Council containing the Constitution. That is to be found in the Anguilla Act 1980 and powers otherwise in Her Majesty vested.

(c) Although this was not discussed during the first round of negotiations, the UK proposes that the Order comes into force in this manner or on a specific day. This is because the key changes to the composition of the House of Assembly and the introduction of the island-wide district have already taken place, so there is not necessarily a need to wait until the next dissolution of the Assembly, as was proposed in the previous draft.

CONSTITUTION OF ANGUILLA

PREAMBLE

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;

Acknowledging 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;

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.

PART 1

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, without distinction of any kind, such as sex, race, colour, language, religion, disability, political or other opinion, national or social origin, association with a national minority, property, birth, [sexual orientation, or other status](a) , 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, of movement and of peaceful assembly and association; and
- (c) respect and protection for his or her private and family life,

the subsequent provisions of this Part shall have effect for the purpose of affording protection to the aforesaid rights and freedoms, and to related rights and freedoms, subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the

(a) These words remain under consideration by Anguilla. This provision needs to correspond with the language of section 17.

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 the right to life which shall be protected by law.

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

(3) A person shall not be regarded as having been deprived of his or her life in contravention of this section if he or she dies as the result of the use, to such extent and in such circumstances as are permitted by law, of force which is no more than absolutely necessary—

- (a) for the defence of any person from violence;
- (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) if he or she 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.

(2) No person shall be deprived of his or her liberty save as may be authorised and in accordance with a procedure prescribed by law in any of the following cases—

- (a) in consequence of his or her 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 or she has been convicted;
- (c) in execution of an order of a court on the grounds of his or her contempt of that 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 or her by law;
- (e) for the purpose of bringing him or her before a court in execution of the order of a court;
- (f) upon reasonable suspicion of his or her 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 or her parent or legal guardian, for his or her education or welfare during any period ending not later than the date when he or she attains the age of 18 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 or her 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 or she is being conveyed through Anguilla in the course of his or her 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 or her 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 or she is

permitted to make to any part of Anguilla in which, in consequence of any other such order, his or her presence would otherwise be unlawful.](a)

(3) Any person who is arrested or detained shall be informed orally and in writing promptly, in a language that he or she understands, of the reasons for his or her detention.

(4) Any person who is arrested or detained shall have the right, at any stage and at his or her own expense, to retain and instruct without delay a legal representative of his or her own choice or, when the interests of justice so require, a legal representative at the public expense, and to hold private communication with such legal representative and, in the case of a minor, to communicate with his or her parent or guardian.

(5) Every person who is arrested or detained shall be informed, promptly and in a language that he or she understands, of his or her rights under subsection (4); and that person shall also have the right, and shall be informed at the same time that he or she has the right, to remain silent and to have one person informed promptly of his or her arrest and his or her whereabouts.

(6) Any person who is arrested or detained—

- (a) for the purpose of bringing him or her before a court in execution of the order of a court; or
- (b) upon reasonable suspicion of his or her having committed or being about to commit a criminal offence under the law of Anguilla,

and who is not released, shall be brought within 48 hours before a court; and if any person arrested or detained upon reasonable suspicion of his or her 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 or her, he or she shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he or she 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 or her in good faith in the discharge of the functions of his or her office and any liability to pay any such compensation in respect of that thing shall be a liability of the Crown.

(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 or her having committed or being about to commit an offence, he or she 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) a person charged before a court with a criminal offence in respect of whom a special verdict has been returned that he or she was guilty of the act or omission charged but was [insane](b) when he or she 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.

Protection of right of prisoners to humane treatment

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 or her status as such.

(a) UK proposed deletion of this paragraph. Under consideration by Anguilla.

(b) The question whether the word “insane” is correct and whether more up to date terminology can be used is under consideration by Anguilla.

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

Protection from slavery and forced or compulsory labour

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

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

(3) For the purposes of this section, the expression “forced or compulsory 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 or she 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 or she is detained;
- (c) any labour required of a member of a disciplined force in pursuance of his or her 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 or her freedom of movement, and, for the purposes of this section the said freedom means the right to move freely throughout Anguilla, the 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 or her 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 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 its authority is shown not to be [necessary](a) in a democratic society;
- (b) for the imposition of restrictions on the movement or residence within Anguilla of any person who is not Anguillian or the exclusion or expulsion from Anguilla of any such person; [but –
 - (i) no restriction may be imposed by virtue only of this paragraph on the right of any such person, so long as he or she is lawfully present in Anguilla, to move freely throughout Anguilla and to reside anywhere in Anguilla;
 - (ii) no restriction may be imposed by virtue only of this paragraph on the right of any such person to leave Anguilla; and

(a) UK proposed this change. Under consideration by Anguilla.

- (iii) no such person shall be liable, by virtue only of this paragraph, to be expelled from Anguilla unless the requirements specified in subsection (4) are satisfied.](a)
- (c) [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, that are reasonably required for the proper performance of their functions;](b)
- (d) 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 some other country in execution of the sentence of a court in respect of a criminal offence under the law of Anguilla of which he or she has been convicted; or
- (e) 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 its authority is shown not to be [necessary](c) in a democratic society.
- (4) [The requirements to be satisfied for the purposes of subsection (3)(b)(iii) (that is to say, before a person who is not an Anguillian may be expelled from Anguilla) are as follows—
- (a) the decision to expel that person is taken by an authority, in a manner and on grounds prescribed by law;
- (b) that person has the right, save where the interests of defence, public safety or public order otherwise require, to submit reasons against his or her expulsion to a competent authority prescribed by law;
- (c) that person has the right, save as aforesaid, to have his or her case reviewed by a competent authority prescribed by law; and
- (d) that person has the right, save as aforesaid, to be represented for the purposes of paragraphs (b) and (c) before the competent authority or some other person or authority designated by the competent authority.](d)
- (5) [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) 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 or she last made such a request during that period, his or her case shall be reviewed by a court.
- (6) On any review by a court in pursuance of subsection (5) of the case of any person whose freedom of movement has been restricted, the court 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.](e)

Protection from torture and inhuman or degrading 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 is to be determined;

(a) Under further consideration by Anguilla.
 (b) UK proposed this change. Under consideration by Anguilla.
 (c) UK proposal. Under consideration by Anguilla.
 (d) UK proposal. Under consideration by Anguilla.
 (e) UK proposed deletion of subsections (5) and (6). Under consideration by Anguilla.

- (b) requires the prompt payment in money of adequate compensation;
- (c) prescribes the manner in which the compensation is to be given; and
- (d) prescribes 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;
- (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;
- (c) upon the attempted removal of the property in question out of or into Anguilla in contravention of any law;
- (d) by way of the taking of a sample for the purpose of any law;
- (e) where the property consists of an animal upon its being found trespassing or straying;
- (f) as an incident of a lease, tenancy, licence, mortgage, charge, bill of sale, pledge or contract;
- (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 unincorporated in the course of being wound up;
- (h) in the execution of judgments or orders of courts;
- (i) by reason of its being in a dangerous state or injurious to the health of human beings, animals or plants;
- (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 Legislature.

(5) In this section “compensation” means the consideration to be given to a person for any interest or right which he or she 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 of private and family life and privacy of home and other property

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

(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 that is necessary in a democratic society—

- (a) that is reasonably required in the interests of defence, internal security, 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 on them 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) for the purpose of preventing or detecting crime;
- (d) 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.

Provisions to secure protection of law

11.—(1) Whenever any person is charged with a criminal offence he or she 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.

(3) Except with the agreement of all the parties to them 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) 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 to them 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 minors or the protection of the private lives of persons concerned in the proceedings.

(5) Every person who is charged with a criminal offence shall be presumed to be innocent until he or she is proved or has pleaded guilty; but 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 promptly, in a language that he or she understands and in detail, of the nature of the offence charged;
- (b) shall be given adequate time and facilities for the preparation of his or her defence;
- (c) shall be permitted to defend himself or herself in person or, at his or her own expense, by a legal representative of his or her own choice or, when the interests of justice so require, by a legal representative at the public expense;
- (d) shall be afforded facilities to examine in person or by his or her 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 or her behalf before the court on the same conditions as those applying to witnesses called by the prosecution;

- (e) shall be permitted to have without payment the assistance of an interpreter if he or she cannot understand or speak 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 or she may choose.](a)
- (f) [shall, when tried before the High Court, have the right to trial by jury except as otherwise provided for by Act of the Legislature.](b)

(7) Except with his or her own consent, the trial of a person charged with a criminal offence shall not take place in his or her absence, unless—

- (a) that person so behaves in the court as to render the continuance of the proceedings in his or her presence impracticable and the court has ordered that person to be removed and the trial to proceed in his or her 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.

(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 or she 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 any other criminal offence of which he or she 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 or she shows that he or she has been pardoned for that offence.

(10) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (9) 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 or her shall in sentencing him or her to any punishment take into account any punishment imposed on him or her under that disciplinary law.

(11) When a person is tried for any criminal offence, the accused person or any person authorised by him or her in that behalf shall, if he or she 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.

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

(13) When a person has been wrongfully arrested or has by a final decision of a court been convicted of a criminal offence and, subsequently, his or her conviction has been quashed, or he or she has been pardoned, on the ground that a newly-disclosed fact shows that there has been a miscarriage of justice, he or she shall be compensated out of public funds for any punishment that he or she 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 or her fault.

(14) 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) shall not apply in relation to his or her trial for a criminal offence under the law regulating the discipline of persons held in such detention.

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

(a) Paragraph (f) is opposed by the UK. Under consideration by Anguilla

(b) Compromise language proposed by the UK, drawn from section 6(2)(g) of the Montserrat Constitution. Under consideration by Anguilla.

Protection of freedom of thought, conscience and religion

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

(2) Except with his or her own consent (or, if he or she is a minor, the consent of his or her parent or legal 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 or her 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 education which it otherwise provides.

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

(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 that is necessary in a democratic society—

- (a) in the interests of defence, internal security, 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.

(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 right to education

13.—(1) This section is without prejudice to section 12.

(2) Every child of the appropriate age, as provided by law, shall be entitled to receive primary [and secondary](a) education which shall, subject to subsection (4), be free.

(3) Except with his or her own consent (or, in the case of a minor, the consent of his or her parent or legal guardian), no person attending a public educational institution shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance.

(4) Every person who is the parent or legal guardian of a child shall be entitled to have his or her child (of whatever age) educated, at his or her own expense unless a law otherwise provides, in a private school (that is to say, a school other than one established by a public authority) and, in such a school, to ensure the religious and moral education of his or her child in accordance with his or her own convictions.

(5) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (4) to the extent that it is reasonably justifiable in a democratic society and to the extent that the law makes provision requiring private schools, as a condition of their being allowed to operate and on terms no more onerous than are applicable to schools established by a public authority, to satisfy—

(a) Under consideration by Anguilla.

- (a) such minimum educational standards (including standards relating to the qualifications of teaching staff and other staff) as may be prescribed by or under any law; and
- (b) such minimum standards imposed in the interests of public order, public morality or public health as may be so prescribed.

Protection of freedom of expression

14.—(1) Except with his or her own consent, no person shall be hindered in the enjoyment of his or her 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 or her 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 that is necessary in a democratic society—

- (a) in the interests of defence, internal security, public safety, public order, public morality or public health;
- (b) 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 television or other means of communication or regarding public exhibitions or public entertainments; or
- (c) that imposes restrictions upon public officers or teachers that are reasonably required for the purpose of ensuring the proper performance of their functions.

Protection of freedom of assembly and association

15.—(1) Except with his or her own consent, no person shall be hindered in the enjoyment of his or her freedom of peaceful assembly and association, that is to say, his or her 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 or her 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 to it; nor shall any person be prohibited from free access to his or her place of employment or return from it by virtue of his or her 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 that is necessary in a democratic society—

- (a) in the interests of defence, internal security, public safety, public order, public morality or public health;
- (b) for the purpose of protecting the rights or freedoms of other persons; or
- (c) that imposes restrictions upon public officers that are reasonably required for the proper performance of their functions,

provided that paragraph (b) 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.

Protection of right to marry

16.—(1)[Notwithstanding anything in section 17, every man and woman of marriageable age (as determined by or under any law) has the right to marry a person of the opposite sex and to found a family.](a)

(1) [Every man and woman of marriageable age (as determined by or under any law) has a right to marry and to found a family in accordance with laws enacted by the Legislature.](b)

(1) [Notwithstanding anything in section 17, every man and woman of marriageable age (as determined by or under any law) has a right to marry and to found a family in accordance with laws enacted by the Legislature.](c)

(2) No person shall be compelled to marry, that is to say, to do so without his or her free and full consent.

(3) Nothing in any law or done under its authority shall be held to contravene subsection (1) to the extent that it is necessary in a democratic society—

- (a) in the interests of public order, public morality or public health;
- (b) regulating, in the public interest, the procedures and modalities of marriage; or
- (c) for protecting the rights and freedoms of other persons.

(4) Spouses shall be entitled to equal rights and shall be subject to equal responsibilities—

- (a) as between themselves, both during the marriage and, if the marriage is dissolved, at its dissolution; and
- (b) as regards their children, where there are any, both during the marriage and, if the marriage is dissolved, on and after its dissolution,

but this equality of rights and responsibilities shall be subject to such arrangements or measures as may be agreed, or as may be ordered by a court, in the interests of the spouses and their children.

Protection from discrimination(d)

17.—(1) Subject to subsections (4), (5) and (7), no law shall make any provision which is discriminatory either of itself or in its effect.

(2) Subject to subsections (6), (7) and (8), 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 such as by sex, race, colour, language, religion, disability, political or other opinion, national or social origin, association with a national minority, property, birth, [sexual orientation, or other status](e) 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) shall not apply to any law so far as that law makes provision—

- (a) [with respect to persons who are not Anguillian;](f)
- (a) [with respect to the entry into or exclusion from, or the employment, engaging in any business or profession, movement or residence within, Anguilla of persons who are not Anguillian;](g)

(a) Anguilla proposal
(b) UK proposal
(c) Compromise UK proposal following discussions.
(d) Although not discussed during the negotiations, UK proposes to remove the words “on the grounds of race, etc.” from the title of this provision, as the prohibited grounds of discrimination are wider than simply race.
(e) These words remain under consideration by Anguilla.
(f) Anguilla proposal.
(g) UK proposal, under consideration by Anguilla.

- (b) [for the application, in the case of persons of any such description as is mentioned in subsection (3) (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](a);
- (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].(b)

(5) Nothing contained in any law shall be held to be inconsistent with or in contravention of subsection (1) to the extent that it makes provision with respect to qualifications or 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.

(6) Subsection (2) 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 subsection (4) or (5).

(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) may be subjected to any restriction on the rights and freedoms guaranteed by sections 7, 10, 12, 14 and 15, being such a restriction as is authorised by paragraph (a) or (e) of subsection (3) of section 7, subsection (2) of section 10, subsection (5) of section 12, subsection (3) of section 14, or subsection (3) of section 15, as the case may be;
- (b) whereby persons of any such description as is mentioned in subsection (3) may be accorded any privilege or advantage which, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is objectively and reasonably justifiable in a democratic society and there is a reasonable proportionality between the means employed and the purpose sought to be realised; or
- (c) which is reasonably justifiable in a democratic society for the protection or well-being of women.

(8) Nothing in subsection (2) 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

18.—(1) The Legislature and the Government of Anguilla 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 Legislature and the Government of Anguilla 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.

Protection of children

19. The Legislature may, in addition to any rights and freedoms provided in this Part 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.

(a) Under consideration by Anguilla.

(b) Under consideration by Anguilla, including for deletion and/or consolidation with a reformulated subsection (4)(a).

Derogations from fundamental rights and freedoms under emergency powers

20. 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 15 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

21.—(1) When a person is detained by virtue of any such law as is referred to in section 20 the following provisions shall apply—

- (a) he or she shall, as soon as reasonably practicable and in any case not more than four days after the commencement of his or her detention, be furnished with a statement in writing in a language that he or she understands specifying the grounds on which he or she is detained;
- (b) not more than 14 days after the commencement of his or her detention, a notification shall be published in the Gazette stating that he or she has been detained and giving particulars of the provision of law under which the detention is authorised;
- (c) not more than one month after the commencement of his or her detention and thereafter during the detention at intervals of not more than six months, his or her 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 or she shall be afforded reasonable facilities to consult a legal representative of his or her own choice who shall be permitted to make representations to the tribunal appointed for the review of the case of the detained person; and
- (e) at the hearing of his or her case by the tribunal appointed for the review of his or her case he or she shall be permitted to appear in person or by a legal representative of his or her 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 or her 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) shall be construed as entitling a person to legal representation at public expense, except when the interests of justice so require.

Enforcement of protective provisions

22.—(1) If any person alleges that any of the provisions of sections 3 to 19 (inclusive) has been, or is being, or is likely to be, contravened in relation to him or her (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) 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 19 (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.

(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 of any of the provisions of sections 3 to 19 (inclusive), 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 or her opinion, the raising of the question is merely frivolous or vexatious.

(5) Where any question is referred to the High Court in pursuance of subsection (4), the High Court shall give its decision on 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.

(7) The Legislature 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 [, subject to any law enacted by the Legislature,](a) 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.

Emergency powers

23. A Proclamation of Emergency for the purposes of this Part may be made in accordance with the Emergency Powers (Overseas Territories) Order 2017,(b) which regulates the exercise of emergency powers in Anguilla.

PART 2

INTERPRETATION

Interpretation

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

“Accountant General” means the officer established by section 133;

[“Act” means an Act of the Legislature;](c)

“Advisory Commission on the Prerogative of Mercy” means the Commission established by section 107;

[“Anguillian” means a person defined as an Anguillian in section 106;](d)

“Anguillian Status Commission” means the Commission established by section 106;

“Appropriation Bill” has the meaning given in section 125(1);

“Appropriations Committee” means the Committee of the House of Assembly established by section 130;

“Assembly” means the House of Assembly established by section 57;

“Attorney-General” means the officer established by section 42;

“Cabinet Secretary” means the officer established by section 50 and appointed in accordance with section 53(5);

“Chief Auditor” means the officer established by section 136;

(a) Under consideration by Anguilla.

(b) S.I. 2017/181.

(c) Although not discussed during the negotiations, the UK proposes including this definition.

(d) Although not discussed during the negotiations, the UK proposes including this definition.

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

“Complaints Commissioner” means the Commissioner established by section 112;

“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;(a)

“Director of Public Prosecutions” means the officer established by section 43;

“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 93;

“Financial Services Commission” means the Commission established by section 100;

“financial year” means the period of 12 months ending on 31 December in any year or such other financial year as may be prescribed by or under an Act;

“Freedom of Information” means the right established by section 115;

“Freedom of Information Commissioner” means the Commissioner established by section 115;

“functions” includes jurisdictions, powers and duties;

“Gazette” means the Official Gazette of Anguilla;

“Government of Anguilla” means the body defined in section 37(1);

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

“House of Assembly” means the House of Assembly established by section 57;

“Human Rights Commissioner” means the Commissioner established by section 111;

“Integrity Commission” means the Commission established by section 104;

“Judicial and Legal Services Commission” means the Commission established by section 102;

“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;

[“Legislature” means the Legislature of Anguilla established by section 57(1);](b)

“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;

[“Minister of Finance” means the Minister responsible for finance in the Government of Anguilla;](c)

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

“National Security Commission” means the Commission established by section 99;

(a) S.I. 1967/223, amended by S.I. 1983/1108, 2000/3060.

(b) Although not discussed during the negotiations, the UK proposes including this definition.

(c) Although not discussed during the negotiations, the UK proposes including this definition.

“Police Complaints Commissioner” means the Commissioner established by section 113;

“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 97;

“Public Accounts Committee” means the Committee established by section 132;

“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 25, 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 114(2);

“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 95;

“Register of Interests” means the Register established by section 105;

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

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

“Standing Committee” means a Committee of the Assembly provided for by section 84;

[“Supplementary Appropriation Bill” has the meaning given in section 125(3);](a) and

“Teaching Service Commission” means the Commission established by section 96.

(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 or her 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 or her powers and duties in exercise of the executive authority of Anguilla and to any other powers or duties conferred or imposed on him or her 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 Proclamation of Emergency is in force in Anguilla under the Emergency Powers (Overseas Territories) Order 2017.

(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 Part 1 other than sections 3, 6 and 7.

(6) In relation to any person who is a member of a disciplinary 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 Part 1.

(a) Although not discussed during the negotiations, the UK proposes including this definition.

References to public office

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

- (a) he or she is in receipt of a pension or other like allowance in respect of public service; or
- (b) he or she is in receipt of any remuneration or allowances in respect of his or her tenure of 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 of any other Commission [or Commissioner]^(a) established by this 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 59(1)(a), this Constitution shall have effect accordingly as if that provision of that law were enacted herein.

(3) References in Part 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

26.—(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 the 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 re-appointment

27. Any person who has vacated his or her 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 Assembly or appointed to that office, as the case may be, from time to time in accordance with this Constitution.

Removal from office

28. 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 require or permit that officer to retire from the public service.

(a) Additional reference to “Commissioner” would seem appropriate.

Resignation

29. 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

30. 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.

PART 3

THE GOVERNOR

The Governor

31.—(1) There shall be a Governor of Anguilla, who shall be appointed by Her Majesty and hold office during Her Majesty's pleasure, and 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 or her 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 or her.

(3) Subject to this Constitution and any other law by which any such powers or duties are conferred or imposed on the Governor, the Governor shall do and execute all things that belong to his or her office according to such instructions, if any, as Her Majesty [through a Secretary of State](a) may from time to time see fit to give him or her; but no court shall enquire whether or not the Governor 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 [or affirmations](b) of allegiance and for the due execution of that office in the forms set out in Schedule 1.

(5) [The Premier and the Leader of the Opposition shall be consulted before the appointment of any person to the office of Governor.](c)

Office of Deputy Governor

32.—(1) There shall be a Deputy Governor who shall be an Anguillian and who shall be appointed by the Governor in accordance with section 53(1), but any appointment shall require the prior approval of a Secretary of State.

(2) The Governor, acting in his or her discretion, may by writing under his or her 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.

(3) The powers and authority of the Governor shall not be affected by any authority of the Deputy Governor under subsection 33 and, subject to this Constitution and 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 or her discretion, may from time to time address to him or her; but the question whether or not the

(a) Although not discussed during the negotiations, the UK proposes the inclusion of this for clarity on the face of the Constitution as to what this means in practice.

(b) Although not discussed during the negotiations, the UK has proposed the inclusion of "affirmation" to ensure consistency with the remainder of the Constitution.

(c) Not agreed. Opposed by UK.

Deputy Governor has in any matter complied with any such instructions shall not be enquired into in any court.

(4) Any authority given under subsection 33 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 or her discretion, by writing under his or her hand.

(5) In subsection 33 the reference to any functions of the office of Governor does not include a reference to—

- (a) the functions conferred on the Governor by this section; or
- (b) any functions conferred on 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(a).

(6) If the office of Deputy Governor is vacant or the person holding that office is acting in the office of Governor under section 33 or is for any other reason 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.

Acting Governor

33.—(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 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 or affirmations directed by section 31(4) 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 or her that he or she 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 or her office—

- (a) at any time when there is a subsisting appointment of a deputy under section 35; or
- (b) by reason of absence from Anguilla for a period not exceeding 48 hours.

Functions of Deputy Governor

34.—(1) Subject to subsection (2), the Deputy Governor shall—

- (a) assist the Governor in the exercise of his or her functions;(b) and
- (b) 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 or her discretion.

(2) [Under the authority of the Governor, the Deputy Governor shall be the 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 offices in the public service or the teaching service, without prejudice to sections 95 and 96.

(a) 1980 c.67.

(b) UK proposal based to streamline this provision based on s.24 of the Montserrat Constitution.

(3) The Governor, acting in his or her discretion, may give directions to the Deputy Governor as to the exercise of the responsibilities referred to in subsection (2) and the Deputy Governor shall comply with any such directions.](a)

Governor's deputy

35.—(1) Whenever the Governor—

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

(b) is suffering from an illness which he or she has reason to believe will be of short duration, the Governor may in his or her discretion, by writing under his or her hand, appoint the Deputy Governor or, in the absence of the Deputy Governor, some other suitable person who is an Anguillian to be his or her deputy during such absence or illness and in that capacity to perform on his or her behalf such of the functions of the office of Governor as may be specified in the instrument by which the deputy 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 or her discretion, may from time to time address to him or her; but no court shall enquire whether or not the deputy 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 the deputy is appointed, and his or her 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 or her discretion.

PART 4

THE EXECUTIVE

Executive authority of Anguilla

36.—(1) The executive authority of Anguilla shall be vested in Her Majesty.

(2) Subject to 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 on them by any law.

Cabinet and Government of Anguilla

37.—(1) There shall be a Cabinet in and for Anguilla which shall consist of the Premier, not more than three other Ministers and two non-voting ex officio members, namely the Deputy Governor and the Attorney-General; and such Cabinet, together with Her Majesty who is represented in Anguilla by the Governor, shall constitute the Government of Anguilla.

(2) The number of Ministers referred to in subsection (1) may be increased by law, but in no circumstances may the number of Ministers be increased so that the total number of Ministers exceeds a number arrived at by subtracting one from the total number of elected members of the Assembly and then dividing by two.

(3) 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

(a) UK proposal based on s.24 of the Montserrat Constitution. For further consideration by Anguilla.

matters for which the Governor has special responsibility under section 44, and the Cabinet shall be collectively responsible to the Assembly for such policies and their implementation.

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

(5) Upon the coming into force of this Constitution, the Special Advisers Act(a) is repealed.

Appointment of Ministers

38.—(1) The Governor, acting in his or her 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 or her judgement, is likely to command the support of a majority of the elected members of the Assembly.

(2) If the Premier dies while in office, the Governor, acting in his or her discretion, shall appoint as the Premier the elected member of the Assembly who, in his or her judgement, is likely to command the support of a majority of the elected members of the Assembly.

(3) Notwithstanding subsection (1), the Governor shall not appoint as Premier a person who has held office as Premier or Chief Minister during two consecutive parliamentary terms unless at least one parliamentary term has expired since he or she last held that office, and for the purposes of this subsection a parliamentary term shall be deemed to be a period commencing when the Assembly first meets after being constituted under this Constitution or after its dissolution at any time, and terminating when the Assembly is next dissolved.

(4) 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.

(5) The Governor, acting in accordance with the advice of the Premier, shall appoint one of the Ministers as Deputy Premier.

(6) The appointment of the Deputy Premier under subsection (5) may be revoked by the Governor, acting in accordance with the advice of the Premier, but such revocation shall not in itself affect the Minister's tenure in office as a Minister.

(7) 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 or she were still a member of the Assembly.

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

Tenure of office of Ministers

39.—(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 or her discretion, may dissolve the Assembly instead of revoking the appointment.

(2) The Premier shall vacate his or her office if, after the polling in a general election and before the Assembly first meets thereafter, the Governor, acting in his or her discretion, informs him or her that he or she is about to appoint another person as the Premier.

(3) Any Minister shall vacate his or her office if—

- (a) he or she ceases to be a member of the Assembly for any reason other than a dissolution;
- (b) he or she is not an elected member of the Assembly when it first meets after a general election;

(a) [Citation of relevant Anguilla Law required]. Anguilla to confirm.

- (c) the Integrity Commission determines that he or she has breached the Code of Conduct for Persons in Public Life for the time being in effect;
 - (d) he or she is required under section 62 to cease to perform his or her functions as a member of the Assembly; or
 - (e) he or she resigns it by writing under his or her hand addressed to the Governor.
- (4) A Minister other than the Premier shall also vacate his or her office if –
- (a) the Premier vacates his or her office; or
 - (b) his or her 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 that the Assembly should declare a lack of confidence in the Government of Anguilla which is lodged with him or her, and any such motion shall be dealt with promptly and in any event within one month.

Performance of functions of Premier in certain events

40.—(1) If the Premier is expected to be absent from Anguilla for more than 48 hours, the Governor shall authorise the Deputy Premier to perform the functions of the office 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 48 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 the Governor that the Premier is unable to perform his or her 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 or her that the Premier is again able to perform his or her 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 the Cabinet, and where the Cabinet fails to give such advice within 24 hours of the Governor seeking such advice, selected by the Governor in his or her discretion) to perform the functions of the office of Premier; and the Governor shall revoke this authority if the Cabinet advises him or her that the Premier or the Deputy Premier is again able to perform his or her functions.

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

Assignment of responsibilities to Ministers

41.—(1) 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 this Constitution and any other law) of any business of the Government of Anguilla, including responsibility for the administration of any department of government, and shall likewise remove or amend any such assignment.

(2) [Without prejudice to section 44(2), (3) and (4), a Minister shall not be assigned responsibility under this section for any of the matters mentioned in section 44(1).

(3) The Governor may not confer on any Minister authority to exercise any function that is conferred or imposed by this Constitution or any other law on the Governor or any person or authority other than a Minister; but nothing in this subsection affects the power of the Legislature under section 57(2).

(4) For the avoidance of doubt, subject only to subsections (2) and (3), any matter may be assigned to a Minister under subsection (1).

(5) Where a Minister has been assigned responsibility under this section for the administration of any department of government, the Minister shall (subject to this Constitution and any other law)

exercise direction and control over that department, including directing the implementation of government policy as it relates to that department, and, subject to such direction and control, the department shall, unless otherwise agreed between the Governor and the Premier, be under the supervision of a permanent secretary who shall be a public officer; but two or more departments may be placed under the supervision of one permanent secretary.

(6) A Minister assigned responsibility for any matter under this section shall exercise his or her responsibility in accordance with the policies of the Government of Anguilla as determined by the Cabinet and in accordance with the collective responsibility of the members of the Cabinet for the policies and decisions of the Government.

(7) The Governor, acting in his or her discretion, may at any time request from a Minister any official papers or seek any official information or advice available to that Minister with respect to a matter for which that Minister is responsible under this section, and shall inform the Premier of any such request.](a)

Attorney-General

42.—(1) There shall be an Attorney-General of Anguilla, whose office shall be a public office and who shall be appointed in accordance with section 103.

(2) The Attorney-General shall be the principal legal adviser to the Government of Anguilla and the Assembly, [and –

- (a) these functions may be exercised by the Attorney-General in person or by officers subordinate to him or her acting under and in accordance with his or her general or special instructions; and
- (b) in the exercise of these functions the Attorney-General shall not be subject to the direction or control of any other person or authority, and any such subordinate officer shall not be subject to the direction or control of any person or authority other than the Attorney-General.](b)

Director of Public Prosecutions

43.—(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 103.

(2) The Director of Public Prosecutions shall have power, in any case in which he or she 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 herself or by any other person or authority.

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

(a) Subsections (2) to (7) proposed by UK, based on BVI Constitution section 56(2) to (7). Under consideration by Anguilla.

(b) UK proposal, based on TCI Constitution section 41(2). Under consideration by Anguilla.

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 or her by this section the Director of Public Prosecutions shall not be subject to the direction or control of any other person or authority.

Governor's special responsibilities

44.—(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 99;
- (d) the administration of the courts;
- (e) [the functions conferred on the Governor by this Constitution or any other law in relation to the public service,](a)

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 Governor, of any business in the Assembly with respect to any of the matters mentioned in subsection (1).

(3) The Governor, acting in his or her 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 or she 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;
- (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, 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;

(a) This is linked to the UK proposal concerning the Deputy Governor and is based on the model in the Montserrat Constitution.

- (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 Minister 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.

(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 or her 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.

(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 or her by this section.](a)

(9) [Before exercising any function with respect to any matter mentioned in subsection (1)(a), (b), and (d), the Governor shall consult the Cabinet but may act against any advice given to him or her by the Cabinet; but the Governor shall not be obliged to consult the Cabinet in any case in which, in his or her judgement—

- (a) it is in the public interest that he or she should act without consulting the Cabinet;
- (b) the matters to be decided are too trivial to require the advice of the Cabinet; or
- (c) the matters to be decided are too urgent to admit the Governor obtaining the advice of the Cabinet by the time within which it may be necessary for him or her to act.

(10) The question of whether a matter falls within the scope of subsection (1) shall be determined by the Governor acting in his or her discretion.](b)

Exercise of Governor's functions

45.—(1) Subject to subsections (2) and (4), the Governor shall consult with the Cabinet in the exercise of all functions conferred on him or her by this Constitution or by any other law for the time being in force in Anguilla and act in accordance with the advice of the Cabinet.

(2) The Governor shall not be obliged to consult with nor act in accordance with the advice of the Cabinet with respect to the following—

- (a) in any case which, in his or her opinion, involves a matter for which the Governor is responsible under section 44;
- (b) any function conferred on him or her by this Constitution or any other law that he or she is empowered to exercise in his or her discretion or judgement;

(a) Anguilla proposal, opposed by UK.

(b) UK counterproposal following the negotiations based on s.39(7) and (8) of the Montserrat Constitution.

- (c) when acting under instructions given to him or her by or on behalf of Her Majesty;
- (d) any function conferred by this Constitution or any other law that he or she is empowered or directed, either expressly or by necessary implication, by that or any other law to exercise without consulting the Cabinet;
- (e) any matter in which, in his or her judgement, the service of Her Majesty would sustain material prejudice thereby;
- (f) where the matter to be decided is in his or her judgement too unimportant to require the advice of the Cabinet; or
- (g) where the urgency of the matter requires him or her to act before the Cabinet can be consulted.

(3) In any case falling within subsection (2)(a) the Governor shall keep the Cabinet informed of any matters that in his or her judgement may involve the economic or financial interests of Anguilla and in any case falling within subsection (2)(g) the Governor shall as soon as practicable inform the Cabinet of the measures that he or she has adopted and the reasons for them.

(4) In any case in which the Governor consults the Cabinet, the Governor may, with the prior approval of a Secretary of State, act otherwise than in accordance with the advice given to him or her by the Cabinet if, in his or her judgement—

- (a) it would be right to do so in the interests of good governance; or
- (b) such advice would affect any of the matters referred to in section 44(1).

(5) Whenever the Governor acts otherwise than in accordance with the advice given to him or her by the Cabinet, any member of the Cabinet may require that there be recorded in the minutes of the Cabinet the grounds of any advice or opinion that he or she may have given on the question, and the Governor shall forthwith forward a copy of the resulting entry in the minutes to a Secretary of State.

(6) Where the Governor is directed by this Constitution or any other law to exercise any function in accordance with the advice of, or after consultation with, any person or authority, the question whether he or she has so exercised that function shall not be enquired into in any court.

(7) When the Governor is directed by this Constitution or any other law to exercise any function after consultation with any person or authority other than the Cabinet, he or she shall not be obliged to exercise that function in accordance with the advice of that person or authority.

Oaths to be taken by members of Cabinet

46. Every member of the Cabinet shall, before entering upon the duties of his or her office as a member, make before the Governor an oath or affirmation of allegiance and an oath or affirmation for the due execution of that office in the forms set out in Schedule 1.

Summoning of persons to Cabinet

47. 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, and the Premier shall summon such an officer if the Governor, acting in his or her discretion, so requests.

Summoning of Cabinet and transaction of business

48.—(1) The Cabinet shall not be summoned except by the authority of the Premier or the Governor, acting in his or her discretion; but the Premier shall summon the Cabinet if not less than two Ministers so request in writing.

(2) No business shall be transacted at any meeting of the Cabinet unless there are at least 50 per cent of the Ministers present including the person in the chair.

(3) Subject to subsection (2), the Cabinet shall not be disqualified for the transaction of business by reason of a 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 shall not be affected by reason only of the fact that some person who was not entitled to do so took part in it.

Presiding in Cabinet

49.—(1) The Governor shall, so far as practicable, attend and chair meetings of the Cabinet but shall not vote.

(2) In the absence of the Governor, the Premier, or in his or her absence, the Deputy Premier shall chair any meeting of the Cabinet.

Cabinet Secretary

50.—(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 53(5); but if at any time he or she 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, acting 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 or she shall have such other functions as the Governor, acting after 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 and the Governor;
- (b) inform all its members and the Governor 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 and the Governor, 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 or her functions under subsection (3)(a) and (b) the Cabinet Secretary shall comply with any instructions given to him or her by the Premier.](a)

(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 or her acting under and in accordance with his or her general or special instructions.

Public seal

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

Power to constitute offices

52. [Subject to this Constitution and any other law in force in Anguilla, the Governor, in Her Majesty's name and on Her Majesty's behalf, may constitute offices for Anguilla.](b)

(a) UK agreed during the negotiations to propose wording in relation to these subsections, but would in fact welcome further clarification from Anguilla as to the proposed role of the Cabinet Secretary.

(b) It was agreed during the negotiations to reinstate a provision on the power to constitute offices using the text from the existing Constitution. However, the UK proposes here a more streamlined version based on s.28 of the Montserrat Constitution.

PART 5

THE PUBLIC SERVICE

Power to appoint, etc., to public offices

53.—(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, acting 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—
 - (i) acting in accordance with the advice of the Teaching Service Commission in relation to the teaching service;
 - (ii) in relation to all other offices, acting 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 110(1)(h),

but the Deputy Governor, acting in his or her discretion, may act otherwise than in accordance with the advice given pursuant subparagraph (i), (ii) or (iii) if he or she determines that compliance with that advice would prejudice Her Majesty's service, 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 or her discretion, once refer the advice of the Teaching Service Commission or the Public Service Commission back to the Commission concerned with a reasoned statement for reconsideration by it.

(3) If the Teaching Service Commission or the Public Service Commission or any Service Commission appointed pursuant to section 110(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 or her discretion, may decline to act in accordance with that advice if he or she 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 or she 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 that the Premier may request once an additional list of persons from the Public Service Commission from which to advise an appointment.

(8) [Regulations made by the Governor, acting in his or her discretion, may provide for the delegation to any other public officer, to such extent and subject to such conditions as may be prescribed in the regulations, of any of the powers conferred on the Deputy Governor by subsection (1)(b) and (2).

(9) Where the Governor, acting in his or her discretion, determines that the exercise of the powers conferred on the Deputy Governor by subsection (1) or delegated to another public officer pursuant to subsection (8) would prejudice Her Majesty's service, the Governor shall give directions as to the exercise of those powers to the Deputy Governor or, as the case may be, the other public officer to

whom powers have been delegated, and the Deputy Governor or, as the case may be, the other public officer shall comply with those directions.](a)

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

(11) This section does not apply to any office to which section 98 or 103 applies.

(12) If a Service Commission is appointed pursuant to section 110(1)(h), this section shall apply equally to such Commission.

Pensions: Applicability of pensions law

54.—(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) applies) shall be the law in force on the date on which the period of service commenced—

- (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,

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 or her case, the law for which he or she opts shall, for the purposes of this section, be deemed to be more favourable to him or her 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, widowers, children, dependents or personal representatives of such persons in respect of such service.

Pensions, etc., charged on revenues of Anguilla

55. 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 pension, etc.

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

(2) In this section “pensions law” means any law relating to the grant to any person, or to the widow, widower, 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.

(a) Subsections proposed by UK, based on Montserrat Constitution section 84(3) and (4). Under consideration by Anguilla.

PART 6

THE LEGISLATURE

Composition of legislature and power to make laws

57.—(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 Legislature 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 74, not less than 11 elected members, and two non-voting ex officio members, namely the Attorney-General and the Deputy Governor.

(4) A law made under subsection (2) may alter the number of elected members of the Assembly, provided that the number of elected members shall be not less than 11; 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 72, 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 established under section 93; 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 (4) shall require the support of two-thirds of the elected members of the Assembly.

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

Qualifications for elected membership(a)

58. Subject to section 59, 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 or she is an Anguillian, is aged 21 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 or her nomination for election [and has resided in Anguilla for a period of not less than three years immediately before the date of his or her nomination for election](b); or
- (b) has resided in Anguilla for a period of not less than three years immediately before the date of his or her nomination for election and is domiciled there at that date, and is the child of parents at least one of whom was born in Anguilla or is the grandchild of grandparents at least one of whom was born in Anguilla.](c)

Disqualifications for elected membership

59.—(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 the law in force in any country;

(a) Under consideration by Anguilla.

(b) Original proposal by Constitutional and Electoral Reform Committee is under further consideration by Anguilla.

(c) Under further consideration by Anguilla in general.

- (c) is a person certified to be [insane](a) 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];(b)
- (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 of Anguilla and has not, by the date of his or her nomination for election, disclosed in a notice to the Integrity Commission the nature of such contract and his or her interest, or the interest of such firm or company, in it; or
- (f) is disqualified for membership of the Assembly by any law in force in Anguilla relating to offences connected with elections.

(2) Subsection (1)(a) shall not be construed as precluding a member of the Assembly from receiving emoluments in respect of his or her services as such a member.

Declaration by candidates for election to Assembly

60.—(1) Each candidate for election to the Assembly shall, on the date of his or her nomination for election, make a written declaration to the Supervisor of Elections that he or she is qualified for election under section 58 and that no disqualification mentioned in section 59 applies to him or her.

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

(3) Within five [working](c) 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

61. 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, he or she is absent from three consecutive meetings of the Assembly;
- (c) if he or she ceases to be resident in Anguilla;
- (d) if he or she resigns his or her seat by writing under his or her hand addressed to the Governor;
- (e) if any of the circumstances arise that, if he or she were not a member of the Assembly, would cause him or her to be disqualified for election to it by virtue of any of paragraphs (a), (b), (c), (e) or (f) of section 59(1);
- (f) in the event of the receipt by the Speaker of any recall petition presented to him or her in accordance with 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 in the last election for the electoral district in question;
- (g) if he or she fails to file his or her declaration of interests as required by section 105; or
- (h) in the circumstances specified in section 62.

(a) The question whether the word “insane” is correct and whether more up to date terminology can be used is under consideration by Anguilla.

(b) Under consideration by Anguilla. UK suggests that inspiration could be sought from s.62(1)(e) and (2) of the Cayman Islands Constitution, s.66(1)(d) and (2) of the BVI Constitution, s.49(1)(e), (g) and (2) of the Turks and Caicos Islands Constitution or s.52(1)(f) and (2) of the Montserrat Constitution.

(c) Although not discussed during the negotiations, the UK suggests allowing five working days.

Vacation of seat on sentence and suspension

62.—(1) Subject to this section, if an elected member is convicted by a court of law in any country of [an offence of dishonesty or immorality](a), he or she shall forthwith cease to perform his or her functions as a member of the Assembly, and his or her seat in the Assembly shall become vacant at the expiration of a period of 30 days thereafter; but the Speaker may, at the request of the member, from time to time extend that period for 30 days to enable the member to pursue any appeal in respect of his or her conviction or sentence, so however that extensions of time exceeding in the aggregate 330 days shall not be given without the approval of the Assembly signified by resolution.

(2) If at any time before the member vacates his or her seat he or she is granted a free pardon or his or her conviction is set aside, [or his sentence is reduced to a term of imprisonment of less than 12 months or a punishment other than imprisonment is substituted,](b) his or her seat in the Assembly shall not become vacant under subsection (1) and he or she may again perform his or her 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](c) he or she shall be suspended from the Assembly and, where applicable, from any ministerial responsibilities until such time as he or she is either acquitted or convicted.

Temporary members of Assembly

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

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

- (a) shall hold his or her seat in the Assembly during Her Majesty's pleasure; and
- (b) shall vacate his or her seat when he or she is informed by the Governor that the member on account of whose incapacity he or she was appointed is again able to perform his or her functions as a member of the Assembly.

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

Leader of the Opposition

64.—(1) Subject to 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 judgement 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;
- (b) if there is no such party, the member of the Assembly who in the judgement of the Governor is best able to command the support of the members of the Assembly in opposition to the Government of Anguilla; 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 of Anguilla, then the member in opposition to the 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

(a) Under consideration by Anguilla. This will ultimately be consistent with the outcome of discussions on section 59.

(b) Under consideration by Anguilla. This will ultimately be consistent with the outcome of discussions on section 59.

(c) Under consideration by Anguilla. This will ultimately be consistent with the outcome of discussions on section 59.

vacant, he or she would appoint to it 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 of it ceases to be a member of the Assembly;
- (b) when the Assembly first meets after a general election;
- (c) if the holder of it is appointed to the Cabinet; or
- (d) if the holder of it resigns it by writing under his or her hand addressed to the Governor.

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

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

(7) [If there are no members of the Assembly in opposition to the Government and therefore no Leader of the Opposition is appointed—

- (a) the requirement to consult the Leader of the Opposition in sections [31(5)](a), 53(1)(a), 107, 117 and 131 does not apply;
- (b) the Governor may, acting in his or her discretion, make the appointments referred to in sections 97(1)(c), 101(1)(c), 102(1)(d) and (3), and 104(1)(c) that would otherwise have been made acting on the advice of the Leader of the Opposition; and
- (c) the Chair of the Public Accounts Committee established under section 132 shall be the person expert in public finance appointed by the Governor under section 132(1)(b).](b)

Power to provide for a referendum

65.—(1) A law enacted by the Legislature may make provision to hold a referendum among persons registered as voters in accordance with section 69 on a matter or matters of national importance, when so resolved by the majority of the 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.

(2) [Subject to this Constitution, a referendum under this section shall be binding on the Government of Anguilla and the Assembly if assented to by more than two-thirds of persons voting in the referendum.](c)

People-initiated referendums

66.—(1) Without prejudice to section 65, a law enacted by the Legislature shall make provision to hold a referendum among persons registered as voters in accordance with section 69 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 25 per cent of persons registered as voters in accordance with section 69;
- (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 determine the date the referendum shall be held in a manner prescribed by law.

(a) This section is objected to by the UK.

(b) Although not discussed during the negotiations, the UK proposes to discuss with Anguilla whether to make specific provision in case there are no opposition members in the House of Assembly. If it is decided to address this point, the UK has also made this proposal for how to do so.

(c) Under consideration by Anguilla.

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

Determination of questions as to membership of Assembly

67.—(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 or her seat in it, shall be determined by the Governor acting in his or her 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 or her seat in it or is required by virtue of section 62 to cease to perform his or her functions as a member, shall be determined by the High Court, whose decision shall be final and not subject to any appeal.

(3) 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—

- (a) a person who voted or had the right to vote at the election to which the application relates;
- (b) a person claiming to have had the right to be returned at such election;
- (c) a person alleging himself or herself to have been a candidate at such election; or
- (d) the Attorney-General.

(4) An application to the High Court for the determination of any question whether an elected member of the Assembly has vacated his or her seat in it or is required by virtue of section 62 to cease to perform his or her functions as a member may be made by—

- (a) any elected member of the Assembly; or
- (b) the Attorney-General.

(5) If any application referred to in subsection (3) or (4) 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

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

69.—(1) [Subject to subsections (2) and (5), a person shall be qualified to be registered as a voter in an electoral district and in the single electoral district if he or she is of the age of 18 years or upwards and—

- (a) is an Anguillian born in Anguilla and is domiciled there at the qualifying date; or
- (b) (i) is an Anguillian who has resided in Anguilla for a period of not less than 12 months immediately before the qualifying date and is domiciled there at that date, and is the lawful spouse, widow or widower, or the son or daughter or the spouse of such son or daughter of a person who was born in Anguilla; or
- (ii) is an Anguillian who is domiciled in Anguilla and has resided there for a period of at least five years immediately before the qualifying date; and
- (c) is at the qualifying date resident in the electoral district in which he or she claims to be registered.](b)

(a) Under consideration by Anguilla.

(b) This subsection is still under consideration by Anguilla.

(2) Every person who is qualified to be registered as a voter in any electoral district shall be entitled to be so registered provided that a person shall not be registered as a voter in more than one electoral district, apart from the single electoral district.

(3) In this section “qualifying date” means such date as may be appointed by or under any law as the date with reference to which the qualifications of persons for registration as voters, for the purpose of the election of members of the Assembly, are to be ascertained.

(4) In this section and section 70, “single electoral district” means the single electoral district established by section 72(2)(a).

(5) No person shall be qualified to be registered as a voter who on the qualifying date—

- (a) is under sentence of death imposed on him or her by a court of law in any country or is under a sentence of imprisonment (by whatever name called) exceeding 12 months imposed on him or her by a court of law in any country or substituted by competent authority for some other sentence imposed on him or her 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](a) 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.

(6) For the purposes of subsection (5)(a)—

- (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.

(7) Within six months after the coming into force of this Constitution, and at such times thereafter as the Governor may by Proclamation direct, 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.

Right to vote at elections

70.—(1) Any person who is registered as a voter in an electoral district and the single electoral district shall, while so registered, be entitled to vote at any election for those districts unless he or she is prohibited from so voting by any law in force in Anguilla—

- (a) because he or she is a returning officer; or
- (b) because he or she has been concerned in any offence connected with elections.

(2) No person shall vote at any election for any electoral district who—

- (a) is not registered as a voter in that district;
- (b) has voted in another electoral district apart from the single electoral district at the same election;
- (c) is in lawful custody; or
- (d) is for any other reason unable to attend to vote in person (except in so far as it may be provided by law that persons unable so to attend may vote).

(a) The question whether the word “insane” is correct and whether more up to date terminology can be used is under consideration by Anguilla.

Laws as to elections

71.—(1) Subject to this Constitution, the Legislature may provide for the election of members of the Assembly, including (without prejudice to the generality of the foregoing power) the following matters—

- (a) the qualifications and disqualifications of voters;
 - (b) the registration of voters;
 - (c) the ascertainment of the qualification of voters and of candidates for election;
 - (d) the division of Anguilla into electoral districts for the purpose of elections;
 - (e) the holding of elections generally;
 - (f) the determination of any question whether any person has been validly elected as a member of the Assembly or whether the seat of an elected member in the Assembly has become vacant;
 - (g) the definition and trial of offences connected with elections and the imposition of penalties for them, 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; and
 - (h) 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.
- (2) [The Legislature shall enact a law providing for the regulation of campaign financing.](a)

Elected members

72.—(1) The elected members of the Assembly shall be persons qualified for election in accordance with this Constitution.

- (2) Subject to section 57(4), 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 seven 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.

PART 7

POWERS AND PROCEDURE IN THE HOUSE OF ASSEMBLY

Standing Orders and committees

73.—(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.

(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

(a) UK proposal. Under consideration by Anguilla.

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 of 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 of 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 of business of the Government of Anguilla for which responsibility has been assigned to a Minister under section 41.

Presiding in Assembly

74.—(1) The Speaker or, in his or her absence, the Deputy Speaker or, if they are both absent, a member of the Assembly elected by the Assembly for that sitting shall preside at each sitting of the Assembly.

(2) 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.

(3) The Speaker shall be elected from among persons who are qualified for election to the Assembly but who are not members of the Cabinet.

(4) [When the Assembly first meets after a general election and before it proceeds to the despatch of any other business except the election of the Speaker, it shall elect a Deputy Speaker from among the elected members of the Assembly other than a Cabinet member; and if the office of Deputy Speaker falls vacant for any other reason than a dissolution of the Assembly, the Assembly shall, as soon as convenient, elect another member to that office.

(5) A person must vacate the office of Speaker or Deputy Speaker—

- (a) on dissolution of the Assembly;
- (b) if that person resigns the office by written notice to the Governor;
- (c) if a motion for that person's removal from office receives in the Assembly the affirmative votes of two-thirds of all members thereof;
- (d) if, being a member of the Assembly, that person ceases to be a member for any reason other than a dissolution of the Assembly or if, by virtue of section 62, that person is required to cease to perform the functions of a member;
- (e) if that person becomes a member of the Cabinet; or
- (f) in the case of a Speaker who is not a member of the Assembly, if any circumstances arise that would cause the Speaker to be disqualified for election as a member of the Assembly by virtue of section 59(1).](a)

(a) Although not discussed during the negotiations, as announced in the House of Assembly on the 25 September (and as requested by the Government of Anguilla with the agreement of the Opposition), it is intended that this section of the existing Constitution will be updated at the November Privy Council meeting to amend the category of persons eligible to hold the office of Deputy Speaker. The effect will be that the office of Deputy Speaker can be held by elected members of the Assembly other than members of the Executive Council (renamed the Cabinet in this revised Constitution). Subsections (4) and (5) reflect this approach.

(6) References in subsection (1) 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

75. The Assembly shall not be disqualified for the transaction of business by reason of any vacancy in its membership (including any vacancy not filled when the Assembly is first constituted or is reconstituted at any time) and any proceedings in it 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

76.—(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 or she 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

77.—(1) Save as otherwise provided in this Constitution, all questions proposed for decision in the Assembly shall be determined by a majority of the 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 or she shall have and exercise a casting vote.

Summoning of persons to assist Assembly

78.—(1) The Speaker or other person presiding may, when in his or her 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.

(2) Any person so summoned shall be entitled to take part as if he or she 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 or she was summoned, except that he or she may not vote.

Introduction of bills

79.—(1) Subject to this Constitution and 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.

(2) Except on the recommendation of the Minister of Finance, 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 mentioned in paragraph (a); 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 mentioned in paragraph (a).

[Governor’s legislative reserved power](a)

80.—(1) [If the Governor considers, acting in his or her discretion, that the enactment of legislation is necessary or desirable—

- (a) with respect to or in the interests of any matter for which he or she is responsible under section 44; or
- (b) to ensure that sufficient funds have been appropriated, within four months of the commencement of each financial year, for the effective operation of committees of the House of Assembly, the courts, the Attorney General’s Chambers, and each institution protecting good governance,(b)

but, after consultation with the Premier, it appears to the Governor that the Cabinet is unwilling to support the introduction into the Legislative Assembly of a bill for the purpose or that the Assembly is unlikely to pass a bill introduced into it for the purpose, the Governor may, with the prior approval of a Secretary of State, cause a bill for the purpose to be published in the Gazette and may (notwithstanding that the bill has not been passed by the Assembly) assent to it on behalf of Her Majesty; but the bill shall be so published for at least 21 days prior to assent unless the Governor certifies by writing under his or her hand that the matter is too urgent to permit such delay in the giving of assent and so informs a Secretary of State.

(2) If any member of the Assembly so desires, he or she may, within 30 days of the publication of a bill under subsection (1), submit to the Governor a statement in writing of his or her comments on such publication and the Governor shall forward such statement, or a copy of it, as soon as is practicable to a Secretary of State.]

Assent to bills

81.—(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 or her 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 or she assents to it or that he or she 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 the Governor, acting in his or her 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;
- (c) to be in any way repugnant to or inconsistent with this Constitution;
- (d) to determine or regulate the privileges, immunities or powers of the Assembly or of its members;
- (e) to affect any matter for which the Governor is responsible under section 44; or
- (f) to affect the integrity or independence of the public service or of the administration of justice.

(a) The Governor’s reserved legislative power remains under consideration by the UK and Anguilla. Following the first round of discussions, the UK has reflected on this power and proposes a revised version of the reserved legislative power in the current Constitution for discussion in the next round. This is based on the reserved legislative power found in s.81 of the Cayman Islands Constitution.

(b) This has been proposed as a means of breaking any deadlock resulting from the operation of section 131(7) if sufficient funds have not been appropriated within 4 months of the commencement of the financial year.

Return of bills by Governor

82.—(1) The Governor may return to the Assembly any bill presented to him or her for assent, transmitting therewith any amendment which he or she may recommend, and the Assembly shall deal with such recommendation.

(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) Subject to section 81(2), the Governor shall assent to the bill on its being returned to him or her for assent a second time, with or without the amendment having been accepted.

[Disallowance of laws]

83.—(1) Any law assented to by the Governor may be disallowed by Her Majesty through a Secretary of State; but no law shall be disallowed until the expiration of a period notified by a Secretary of State to the Governor, who shall advise the Speaker of that period, in order to give the Assembly an opportunity to reconsider the law in question.(a)

(2) Whenever any law has been disallowed by Her Majesty, the Governor shall cause notice of such disallowance to be published in the Gazette and the law shall be annulled with effect from the date of publication of that notice.

(3) Section 16(1) of the Interpretation Act 1978(b) shall apply to the annulment of any law under this section as it applies to the repeal of an Act of Parliament, save that any enactment repealed or amended by or in pursuance of that law shall have effect as from the date of the annulment as if that law had not been made.]

OR

[Pre-legislative controls]

83.—(1) Except with the consent of the Governor, acting in his or her discretion, signified by the Premier, the Assembly shall not proceed upon any bill (including any amendment to a bill) that, in the opinion of the Governor, acting in his or her discretion, signified as aforesaid, concerns a matter for which the Governor is responsible under section 44(1).

(2) Every bill shall be published in the Gazette, and the Assembly shall not proceed upon any bill until the expiration of six weeks after the date on which the bill was so published, unless the Premier certifies by writing under his or her hand that consideration of the bill is too urgent to permit such a delay.](c)

Standing Committees

84.—(1) The Assembly shall establish at least two Standing Committees of the Assembly, one of which shall be the Appropriations Committee established by section 130 and the other the Public Accounts Committee established by section 132, and each of which shall be charged with responsibility for monitoring the conduct of business of the Government of Anguilla for which responsibility has been assigned to a Minister under section 41.

(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) Subsection (1) based on BVI Constitution section 80(1).

(b) 1978 c. 30.

(c) Alternative versions of section 83, proposed by UK. Under consideration by Anguilla.

- (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 [or affirmation](a) and provide information about the conduct of business of the Government of Anguilla by the Minister, ministry or department concerned; and
- (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 High 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.

(6) Each Standing Committee shall be presided over by a member of the Assembly in opposition to the Government of Anguilla, 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

85. 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 or she has made before the Speaker an oath or affirmation of allegiance in the form set out in Schedule 1; but the election of a Speaker and Deputy Speaker of the Assembly may take place before the members of it have made such oath or affirmation.

Privileges of Assembly and members

86. 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 and powers shall exceed those of the House of Commons of the United Kingdom or of the members of it.

Sessions

87.—(1) Subject to 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, and there shall be an interval of less than 12 months between the last sitting in one session and the first sitting in the next session.

Prorogation and dissolution

88.—(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 of polling in the last general election, unless it has been sooner dissolved.

(a) Although not discussed during the negotiations, the UK makes this proposal for consistency with the rest of Constitution.

General elections

89.—(1) After the coming into force of this Constitution, there shall be a general election on the first Monday after the fifth anniversary of the last general election.

(2) The polling day for each subsequent general election shall be the first Monday after the fifth anniversary of the previous general election.

(3) The Governor, acting in accordance with the advice of the Premier, may by order made by statutory instrument provide that the polling day for a general election in a specified calendar year shall be later than the day determined under subsection (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 resolution of the Assembly.

(5) The draft laid before the Assembly containing an order under subsection (3) must be accompanied by a statement setting out the Premier's reasons for proposing the change in the polling day.

(6) Where under section 39(1) or 88(2) the Assembly is dissolved before the five-year period referred to in section 88(3), the polling day for the ensuing general election shall be the day appointed by the Governor, acting in his or her discretion.

PART 8

THE JUDICATURE

Eastern Caribbean Supreme Court

90. The Supreme Court Order 1967(a) 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

91. 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.

Appeals to Her Majesty in Council

92.—(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—

- (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\$[10,000](b) 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\$[10,000] or upwards;
- (c) final decisions in proceedings under section 22;
- (d) final decisions in proceedings for dissolution or nullity of marriage; and
- (e) in such other cases as may be prescribed by a law enacted by the Legislature.

(a) S.I. 1967/223, amended by S.I. 1983/1108, 2000/3060.

(b) UK proposal, under consideration by Anguilla.

(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 thence to Her Majesty in Council with the leave of the Court of Appeal—

(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 a law enacted by the Legislature.

(3) Subsections (1) and (2) are subject to sections 60(3) and 67(2).

(4) In this section the references to final decisions of a court do not include any determination by the court that any application made to it 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.

PART 9

INSTITUTIONS PROTECTING GOOD GOVERNANCE

[The number and types of commissions and commissioners have not yet been agreed]

Electoral District Boundary Commission

93.—(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, acting after consultation with the Premier and the Leader of the Opposition, may determine; but a Commission shall be appointed not later than ten years after the last Commission submitted its report under section 94.

(2) A Commission shall consist of—

(a) a Chair, being a person who is an Anguillian, appointed by the Governor, acting in his or her 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 a Commission if he or she is a member of the Assembly or a public officer other than the holder of a judicial office.

(4) A quorum for meetings of a Commission shall be two.

(5) The Chair or other member of a Commission shall vacate his or her office—

(a) on the day following the submission of the report of the Commission under section 94;

(b) if any circumstances arise that, if he or she were not a member, would cause him or her to be disqualified for appointment as such; 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 his or her office (whether arising from infirmity of body or mind or from any other cause) or for misbehaviour.

Review and alteration of electoral district boundaries

94.—(1) An Electoral District Boundary Commission shall, as soon as practicable after its appointment under section 93, review the electoral district boundaries into which Anguilla is divided and, taking into account the changes or 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 (apart from the single electoral district established by section 72(2)(a)) contain, so far as is reasonably practicable, approximately equal numbers of persons qualified to be registered as voters under section 69 and based on any last previous national census findings or report.

(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 by the Attorney-General 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

95.—(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 Governor, acting in his or her discretion; and
- (b) two shall be appointed by the 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 officers in the government of Anguilla.

Teaching Service Commission

96.—(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 Governor, acting in his or her discretion; and
- (b) one shall be appointed by the 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(a)

97.—(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 Governor, acting in his or her discretion;
- (b) one shall be appointed by the Governor, acting in accordance with the advice of the Premier;

(a) A proposal for a combined Police, Fire and Prison Service Commission is under consideration by Anguilla.

- (c) one shall be appointed by the Governor, acting in accordance with the advice of the Leader of the Opposition; and
- (d) one shall be appointed by the Governor, acting after consultation with the Police Welfare Association.

(2) A quorum shall be four members.

(3) Subject to section 98, 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

98.—(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; but the Deputy Governor may, acting in his or her discretion, act otherwise than in accordance with that advice if he or she determines that compliance with that advice would prejudice Her Majesty's service.

(2) Power to make appointments to offices in the Police Service of a rank superior to Inspector 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 Police Service Commission; but the Governor, acting in his or her discretion, may act otherwise than in accordance with that advice if he or she determines that compliance with that advice would prejudice Her Majesty's service.

(3) 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 or her discretion, may act without the approval of the National Security Commission if he or she determines that to do otherwise would prejudice Her Majesty's service.

(4) Before exercising the powers vested in the Deputy Governor by subsection (1), or in the Governor by subsection (2), the Deputy Governor or the Governor, as the case may be, may, acting in his or her discretion, once refer the advice of the Police Service Commission back to the Commission for reconsideration by it.

(5) If the Police Service Commission, having reconsidered its original advice under subsection (4), substitutes for it different advice, subsection (4) shall apply to that different advice as it applies to the original advice.

(6) The 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.

(7) Where the Governor, acting in his or her discretion, determines that the exercise of the powers conferred on the Deputy Governor by subsection (1) or delegated to another person under subsection (6) would prejudice Her Majesty's service, the Governor shall give directions as to the exercise of those powers to the Deputy Governor or, as the case may be, the other person to whom powers have been delegated, and the Deputy Governor or, as the case may be, the other person shall comply with those directions.(a)

(a) Based on Montserrat Constitution section 84(4). Compare section 53(9) above, under consideration by Anguilla.

National Security Commission

99.—(1) There shall be for Anguilla a National Security Commission which shall consist of—

- (a) the Governor, as Chair;
- (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)(d) shall vacate his or her seat on the National Security Commission if—

- (a) his or her office as Minister becomes vacant under section 39; 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 or she 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 or she 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.

(6) The Governor, acting in his or her discretion, may summon a meeting of the National Security Commission whenever he or she 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

100.—(1) 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 and have such specific functions and powers and a board to be appointed by the Governor, all as may be provided in a law enacted by the Legislature.

(2) In making appointments to the board the Governor shall act after consultation with the Cabinet, but the Governor shall not be bound by any advice given by the Cabinet.

Appointments Commission(a)

101.—(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; and
- (c) one shall be appointed by the Governor, acting in accordance with the advice of the Leader of the Opposition.

(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

102.—(1) There shall be in and for Anguilla a Judicial and Legal Services Commission which shall consist of—

- (a) the Chief Justice, who shall be the Chair;
- (b) another judge of the Court of Appeal or the High Court nominated by the Chief Justice after consultation with the Governor;
- (c) the Chair 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; but 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 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 previous holder of the office is able to resume his or her 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

103.—(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; but the Governor, acting in his or her discretion, may act otherwise than in accordance with that advice if he or she 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 or her discretion, once refer the advice of the Judicial and Legal Services Commission back to the Commission for reconsideration by it.

(a) This section under reconsideration by Anguilla

(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.

(4) This section applies to the offices of—

- (a) Attorney-General;
- (b) Director of Public Prosecutions;
- (c) [Chief Magistrate and](a) 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 or she 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 or she 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 or she 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 or her 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 or she is appointed, may only be removed from office for inability to discharge the functions of his or her 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 or her office pending the outcome of the referral.

Integrity Commission

104.—(1) There shall be an Integrity Commission for Anguilla which shall consist of—

- (a) a Chair, being a person qualified for judicial office, appointed by the Governor, acting in his or her 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 or she 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.

(4) The Integrity Commission shall—

(a) Although not discussed during the negotiations, UK proposes the inclusion of this reference to the Chief Magistrate.

- (a) have and exercise the functions conferred on it by sections 39, 59, 105 and 137;
 - (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 (3), 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.

Registration of Interests

105.—(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 person connected with him or her, as may be prescribed by law.

(3) A person shall make a declaration under subsection (2) on assuming the functions of his or her office and at such intervals thereafter (being no longer than 12 months) as may be prescribed by law.

(4) This section applies immediately upon the commencement 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 Legislature shall make provision for giving effect to this section, including the sanctions that 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

106.—(1) There shall be an Anguillian Status Commission (in this section referred to as “the Commission”) for the purpose of granting Anguillian status under this Constitution with such functions and membership as may be prescribed in a law.

(2) For the purposes of this Constitution, a person is an Anguillian if that person—

- (a) is a person born or adopted in or outside Anguilla and who has at least one parent or grandparent who was born or adopted in Anguilla, where such parent or grandparent is regarded as being an Anguillian by virtue of this Constitution or [was regarded as an Anguillian or](a) as belonging to Anguilla by virtue of any previous Constitution;
- (b) [was regarded as an Anguillian](b) or as belonging to Anguilla by virtue of any previous Constitution;
- (c) is a British overseas territories citizen having been born or adopted in Anguilla or having become such a citizen by virtue of registration or naturalisation while resident in Anguilla;

(a) UK proposal. This change was not discussed during the negotiations, but is desirable to reflect the fact that the term “Anguillian” was introduced into the Constitution in 2019.

(b) UK proposal. This change was not discussed during the negotiations, but is desirable to reflect the fact that the term “Anguillian” was introduced into the Constitution in 2019.

- (d) is a British overseas territories citizen domiciled in Anguilla and whose father or mother by virtue of registration or naturalisation while resident in Anguilla became a British Dependent Territories citizen at the commencement of the British Nationality Act 1981^(a) (or would have done so but for his or her death) or so became such a citizen after the commencement of that Act;
- (e) has been granted Anguillian status by the Commission on the basis that that person—
 - (i) is a great-grandchild of a person born in Anguilla and who is regarded as being an Anguillian by virtue of this Constitution or [was] regarded [as being an Anguillian or]^(b) as belonging to Anguilla by virtue of any previous Constitution, where the great-grandchild has resided in Anguilla for a continuous period of at least five years;
 - (ii) has resided in Anguilla for a continuous period of at least 15 years;
 - (iii) is born in Anguilla and is a child under the age of 18 years of a person referred to in subparagraph (ii);
 - (iv) is born outside Anguilla and is a child under the age of 18 years of a person referred to in subparagraph (ii), where the child has resided in Anguilla for a continuous period of at least three years;
 - (v) is born in Anguilla and does not qualify under any of the foregoing provisions of this subsection, but has resided in Anguilla for a continuous period of at least ten years; or
 - (vi) is married to an Anguillian and has been so married for at least five years.

(3) The Commission may withdraw the status of Anguillian from any person referred to in subsection (2)(e)(ii), (2)(e)(iv) or (2)(e)(vi) if that person is convicted of an indictable offence by a court in Anguilla.

(4) A withdrawal of Anguillian status under subsection (3) does not prejudice the status of an Anguillian who obtained such status by virtue of a relationship to the person whose status has been withdrawn.

(5) Any reference in this section to a period of residence in Anguilla is to be construed as a reference to residing lawfully in Anguilla and not in breach of Anguilla's immigration laws and will be calculated in a manner determined by law.

Advisory Commission on the Prerogative of Mercy

107.—(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 Medical Services and four members appointed by the Governor, acting after consultation with the Premier and the Leader of the Opposition, for the purpose of advising the Governor on the exercise of his or her power of pardon under subsection (4).

(2) The Commission shall not be summoned except on the authority of the Governor, acting in his or her discretion; and the Governor shall preside at all meetings of the Committee.

(3) A quorum for meetings of the Commission shall be three members, of whom one shall be the Attorney-General.

(4) Acting after consultation with the Commission, the Governor may, in Her Majesty's name and on Her Majesty's behalf—

- (a) grant to any person concerned in the commission of any offence for which he or she 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 or her in respect of the conviction;

(a) 1981 c.61.

(b) UK proposal. This change was not discussed during the negotiations, but is desirable to reflect the fact that the term “Anguillian” was introduced into the Constitution in 2019.

- (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

108.—(1) The Governor, acting after consultation with the Cabinet, may appoint one or more Commissioners selected by him or her 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 or her opinion, of public importance or as may be prescribed by law.

(2) The Governor shall not be bound by any advice given to him or her by the Cabinet under subsection (1).

General provisions regarding Commissions

109.—(1) Subject to section 131 and to any contrary specific provisions contained in this Constitution, the following general provisions apply to Commissions established by this Constitution.

(2) In the exercise of its functions a Commission shall not be subject to the direction or control of any other person or authority.

(3) A Commission may, with the consent of the Governor acting in his or her discretion, confer powers or impose duties on any public officer or on any authority of the Government of Anguilla 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 Chair of the Commission.

(6) No person shall be qualified to be appointed as a member of a Commission if he or she is a member of, or a candidate for election to, the Assembly.

(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 or her appointment or such earlier time as may be specified in the instrument by which he or she was appointed;
- (b) if he or she resigns his or her office by writing under his or her hand addressed to the Governor;
- (c) if he or she 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 or her discretion, directs that he or she shall be removed from office for inability to discharge the functions of it (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 or her 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 subsection (7), continue so to act until he or she is notified by the Governor, acting in his or her discretion, that the circumstances giving rise to the appointment have ceased to exist; but in the case of a vacancy in the office of the Chair or the inability of the holder of it to perform his or her functions, the functions of the office of Chair shall be performed by such member of the Commission or person acting as a member as the 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 Chair shall have and exercise a casting vote.

(11) There shall be charged on the revenues of Anguilla and paid out of them to the members of a Commission such emoluments as may be prescribed by any law for the time being in force in Anguilla; but the emoluments of a member of a Commission shall not be reduced during his or her 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 its functions.

(14) The Assembly shall within one month of receipt of each annual report publish it in a widely accessible form.

Legislation regarding Commissions

110.—(1) Subject to this Constitution, the Legislature 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 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 service Commissions which are amalgamated the single Commission shall be known as a 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 District Boundary Commission, the Public Service Commission, the Teaching Service Commission, the Police Service Commission, the National Security Commission, the Financial Services Commission, the Appointments Commission, the Judicial and Legal Services Commission, the Integrity Commission, the Anguillian Status Commission, the Advisory Commission on the Prerogative of Mercy, and a Commission of Inquiry.

Human Rights Commissioner

111.—(1) There is established a Human Rights Commissioner for Anguilla (in this section referred to as “the Commissioner”).

(a) Although not discussed during the negotiations, the UK proposes amending this to “a”, as there could be more than one amalgamated service commission.

(2) The powers and duties of the Commissioner (which shall not derogate from 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 infringements of any right or freedom referred to in Part 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 Part 1;
- (c) issuing guidance on procedure for dealing with any complaints of breaches or infringements of rights and freedoms referred to in Part 1;
- (d) imparting knowledge to the public with respect to the rights and freedoms referred to in Part 1 or in relation to any international instrument or activity relating to human rights; and
- (e) preparing and submitting periodically reports concerning his or her activities to the Assembly.

(3) The power of the Commissioner to deal with any matter under Part 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—

- (a) oblige a person to refer any complaint of a breach or infringement of any right or freedom referred to in Part 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 Part 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

112. 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.

Police Complaints Commissioner

113. 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

114.—(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 Legislature designed to accord with the principles of good governance, accountability, transparency, integrity and value for money.

(2) There is established a Public Procurement Commissioner for Anguilla whose duties and responsibilities shall include—

- (a) investigating, on his or her 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); and
- (b) subject to this section, any other duty or function that may be conferred on him or her by the Act referred to in subsection (1).

Freedom of Information Commissioner

115.—(1) There shall be a Freedom of Information Commissioner for Anguilla who shall receive complaints, investigate, decide and report on the compliance of public authorities with the Freedom of Information law enacted by the Legislature.

(2) That 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 [which may include those 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](a).

(3) If a report prepared by one of the institutions protecting good governance 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](b)

116.—(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 117, the Supervisor of Elections shall have such other functions and jurisdiction as may be prescribed by law.

General provisions relating to Commissioners

117.—(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 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 or she 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.

(4) The office of a Commissioner shall become vacant—

- (a) at the expiration of the period specified in the instrument by which he or she was appointed;
- (b) if he or she resigns office by writing under his or her hand addressed to the Governor;
- (c) if he or she becomes an elected member of the Assembly or the holder of any office in a political party; or
- (d) 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 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 or her discretion, may authorise by directions in writing, a Commissioner shall not hold any other office of emolument in the public service other than the duties of his or her office.

(6) In the exercise of his or her functions, a Commissioner shall not be subject to the direction or control of any other person or authority.

(7) Subject to section 131, there shall be charged on the revenues of Anguilla and paid out of them to every Commissioner such emoluments as may be prescribed by any law for the time being in

(a) Under consideration by Anguilla.

(b) This section is still under consideration by Anguilla.

force in Anguilla; but the emoluments of a Commissioner shall not be reduced during his or her continuance in office.

(8) The same person may be appointed by the Governor to fill two or more offices of Commissioner under this Constitution, in which case he or she shall be known as a Constitutional Commissioner.

(9) Subject to this Constitution, the Legislature 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 or she performs his or her functions;
- (c) consultation by a Commissioner with other persons or authorities;
- (d) the protection and privileges of a Commissioner in respect of the performance of his or her 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 shall report annually to the Assembly on the performance of his or her functions.

(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(b)

118.—(1) Subject to any law for the time being in force in Anguilla, the Governor or any person duly authorised by him or her by writing under his or her hand may, in Her Majesty’s name and on Her Majesty’s 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—

- (a) Crown land in excess of a half-acre;
- (b) lease or charge over any such land in Anguilla; or
- (c) mineral or fishing rights,

may be sold, leased, charged, exchanged, or otherwise disposed of or dealt with without a resolution of the Assembly authorising the transaction.

(3) The Assembly shall by resolution define what constitutes a “significant public asset” for the purposes of this section.

(a) Although not discussed during the negotiations, the UK proposes this amendment so that more than one person can be given multiple commissioner roles. This was not previously clear.

(b) This section is still under consideration by Anguilla. Reformulated proposal by UK.

PART 10
[PUBLIC FINANCE](a)

General principles

119.—(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.

(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”) stating the 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 (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(b) 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.

(9) In this section “the Government” means the Government of Anguilla.

Taxation

120.—(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 powers on any person or authority to waive or vary a tax, rate or other levy imposed by that Act, that person or authority shall report to the Assembly on the exercise of those powers as often as shall be determined by law but not less than every six months.

(a) This chapter is still under consideration by Anguilla. The version proposed by the Constitutional and Electoral Reform Committee is included here with further changes proposed by UK.
(b) RSA c.9 of 2013.

Contingent liabilities

121. The Minister of Finance shall ensure that all contingent liabilities of the Government of Anguilla, including pension and healthcare liabilities, are subjected to independent actuarial assessment at least every [three](a) years, and shall report the information provided by any such assessment to the Assembly within two months of receiving it.

Consolidated Fund

122.—(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 of Anguilla.

(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 12 months; or
- (b) in an investment authorised by law and approved by the Assembly.

(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

123.—(1) No monies shall be withdrawn from the Consolidated Fund except—

- (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 authorised 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 authorised by law.

(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 authorised by the Assembly by resolution and subject to subsection (4), authorise the issue of monies from the Consolidated Fund for the purpose of meeting expenditure necessary to carry on the services of the Government of Anguilla 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 of Anguilla—

- (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

124. At least six weeks before the beginning of each financial year the Minister of Finance shall cause to be prepared and laid before the Assembly—

- (a) estimates of revenue and expenditure of the Government of Anguilla for that financial year; and

(a) This is amended from two years in the original Constitutional and Electoral Reform Committee proposal.

- (b) a document setting out targets for revenue and expenditure for the next three financial years, and an assessment of performance against the debt [ratios](a) as set out in the Fiscal Framework,

and the Assembly shall publish those estimates and that document without delay.

Appropriation Bill

125.—(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.

(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.

(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 or her judgement the enactment of that bill would be inconsistent with section 119 or the Fiscal Framework.

Excess expenditure(b)

126.—(1) Where, in exceptional circumstances, at the close of accounts for any financial year it is found that monies have been expended on any expenditure in excess of the amount appropriated for it by an Appropriation Act or a Supplementary Appropriation Act or for a purpose for which no monies have been voted and appropriated, the amount of the excess expended, or not appropriated, as the case may be, shall be included in a statement of expenditure in excess.

(2) The Minister of Finance shall lay every statement of expenditure in excess before the Assembly, which shall refer it to the Public Accounts Committee, and the Minister shall at the same time send a copy of the statement to the Governor.

(3) The Public Accounts Committee shall report to the Assembly on a statement of expenditure in excess referred to it under subsection (2) within six months after the statement is referred to it.

(4) Where on receiving any report of the Public Accounts Committee issued under subsection (3) the Assembly, by means of a resolution, allows the excess or the amount expended but not appropriated to stand charged to public funds, the sum required to meet that excess or such amount as shall be allowed shall be included in a Supplementary Appropriation Bill for appropriation.

Contingencies(c)

127.—(1) The Minister of Finance, if he or she is satisfied that there is an urgent and unforeseen need for expenditure for which no provision or insufficient provision has been made by an Appropriation Act or a Supplementary Appropriation Act, may, by a Contingencies Warrant under his or her hand and in anticipation of the grant of an appropriation by the Legislature, authorise an advance from the Consolidated Fund to meet that need and shall forthwith report his or her action to the Cabinet.

(a) The UK suggests changing “debt sustainability limits” to “debt ratios” to ensure consistency of terminology throughout Chapter 10.

(b) New section proposed by UK, based on TCI Constitution section 117.

(c) New section proposed by UK based on TCI Constitution section 118.

(2) No Contingencies Warrant shall be issued by the Minister of Finance without the prior approval of the Governor, acting in his or her discretion, and the Assembly shall be invited to approve the expenditure resulting from any Contingencies Warrant issued by the Minister.

(3) An advance made under subsection (1) shall be subject to any Act and to any restrictions imposed by the Assembly by resolution from time to time.

Power of Government to borrow or lend

128.—(1) Subject to this Constitution, the Government of Anguilla may borrow from any source.

(2) The Government of Anguilla shall not borrow, guarantee or raise a loan on behalf of itself or any other public institution, authority or person except—

- (a) as authorised by or under an Act; and
- (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 of Finance 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 utilisation and performance of the loan.

(5) Where a Guarantee is given by Her Majesty's Government in the United Kingdom in connection with any borrowing under this section, the Government of Anguilla shall repay the guaranteed borrowing as quickly as possible.

(6) The Governor may, on behalf of the Government of Anguilla, 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 of Anguilla with its obligations under any such arrangements.

(7) The Assembly may, by resolution, authorise the Government of Anguilla 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) 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 subsection (7) or (8) must be compatible with section 119 and the Fiscal Framework.

(10) For the purposes of this section, "loan" includes any money lent or given to or by the Government of Anguilla 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.

Exercise of functions in Part 10 by Governor

129. In the exercise of any function conferred on the Governor by sections 119 to 128 (inclusive) the Governor shall [act in his or her discretion](a) and shall comply with any instructions that may be given to him or her by a Secretary of State.

Appropriations Committee

130.—(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 Assembly in opposition to the Government of Anguilla.

(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 or her 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 Assembly shall publish all reports of the Appropriations Committee without delay.

Provision for and funding of institutions protecting good governance

131.—(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, acting after consultation with the Premier and the Leader of the Opposition, may confer powers and impose duties on any public officer or any authority of the Government of Anguilla for the purpose of the discharge of any of the institution's functions.

(4) Before 31 August of the preceding year—

- (a) each institution protecting good governance shall submit to the Appropriations Committee 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 current budget policies of the Government of Anguilla 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 (4)(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 (4)(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.(b)

(a) This language is additional to the draft proposed by the Constitutional and Electoral Reform Committee, but the UK proposes this addition. Otherwise, section 129 would not add anything to the general duty of the Governor to comply with instructions in s.31(3).

(b) The UK has proposed a way for any deadlock to be broken in s.80(1)(b) (the Governor's reserved legislative power) if sufficient funds have not been appropriated within 4 months of the commencement of the financial year.

Public Accounts Committee

132.—(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 or her discretion.

(2) The Chair 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 or she was appointed;
- (b) if he or she becomes a member of the Assembly; or
- (c) if the person who made the appointment revokes it, acting in his or her 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 Chair of the Committee, considers that a member of the Committee has a conflict of interest, the Governor, acting in his or her 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 136; 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 Assembly or as the Chief Auditor has brought to the attention of the Assembly,

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 have power to compel the production of documents and evidence from Ministers, departments of government and public officers, and shall meet in public.^(a)

(7) 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 provided in the Committee's terms of reference, such report may be with or without recommendations.

(8) 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 of Anguilla in respect of the report, the member concerned shall convey the Government's response to the Assembly not later than the first sitting day following the expiration of six weeks after the date of the Assembly's request, unless the Assembly extends the time for the response.

(9) 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 or her nominee.

(10) The Public Accounts Committee may invite any person to assist it in its work and to participate in its proceedings.

Accounting officers

133.—(1) There shall be an Accountant General of the Government of Anguilla, whose office shall be a public office.

(a) New subsection proposed by UK, based on TCI Constitution section 122(6).

(2) The Accountant General shall be responsible for the compilation and management of the accounts of the Government of Anguilla 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 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.

Public debt(a)

134.—(1) The public debt of Anguilla shall be charged on the Consolidated Fund and other public funds of Anguilla.

(2) For the purposes of this section, the public debt includes the interest on that debt, sinking fund payments in respect of that debt, and the costs, charges and expenses incidental to the management of that debt.

Financial control and accounts(b)

135.—(1) The Minister of Finance shall provide the Assembly with such reports, information and accounts as may be necessary to ensure that the Assembly is kept fully informed at all times of the state of the economy of Anguilla and the finances of the Government of Anguilla.

(2) Every public corporation or other body or organisation established by or under an Act shall report its financial transactions to the Minister of Finance, who shall include such reports in the information provided to the Assembly under subsection (1).

(3) An Act shall make provision for the regular publication of accounts of the Consolidated Fund and any other public funds and for the laying of such accounts and any reports on them before the Assembly.

Audit

136.—(1) There shall be a Chief Auditor for Anguilla whose office shall be a public office.

(2) The accounts of the Assembly and all ministries, departments of government and offices (including all Commissions and individual Commissioners)[, as well as every public corporation or other body or organisation established by or under an Act,](c) shall be audited and reported on annually by the Chief Auditor, and for that purpose the Chief Auditor or any person authorised by him or her in that behalf shall have access to all books, records, returns and other documents relating to such accounts.

(3) In the exercise of his or her 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 or her reports made under subsection (2) to the Public Accounts Committee and 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.

(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.

(a) New section proposed by UK, based on TCI Constitution section 120.

(b) New section proposed by UK, based on TCI Constitution section 121. We could also consider including this after section 128 to keep provisions on public debt together.

(c) The UK suggest this addition so that statutory bodies are also subject to the audit requirements set out here. This links to the requirement already in draft section 135(2) for such bodies to provide financial reports to the Minister of Finance for inclusion in reports provided to the House of Assembly.

Remuneration of Speaker and other members of Assembly

137.—(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 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.

Remuneration of certain officers(a)

138.—(1) There shall be paid to the holders of the offices to which this section applies such remuneration and allowances as may be prescribed by or under an Act.

(2) The remuneration and allowances payable to the holders of those offices are hereby charged on and shall be paid out of the Consolidated Fund.

(3) The remuneration prescribed in pursuance of this section in respect of the holder of any such office and his or her other terms of service (other than allowances that are not taken into account in computing, under any law in that respect, any pension payable in respect of his or her service in that office) shall not be altered to his or her disadvantage after his or her appointment.

(4) Where a person's remuneration or other terms of service depend on his or her option, the remuneration or terms for which he or she opts shall, for the purposes of subsection (3), be deemed to be more advantageous to him or her than any others for which he or she might have opted.

(5) This section applies to the offices of Deputy Governor, Attorney-General, Director of Public Prosecutions, Chief Magistrate, Magistrate, Chief Auditor and Commissioner of Police.

(6) Nothing in this section shall preclude an Act that reduces the level of remuneration payable to the holder of any office to which this section applies where that Act makes equivalent reduction to the remuneration of all members of the public service.

PART 11(b)

TRANSITIONAL AND MISCELLANEOUS

Meaning of the appointed day

139. In this Part, "the appointed day" means the day referred to in section 1(2) of this Order, that is to say the date of commencement of this Constitution.

Revocations

140. The instruments and provision specified in Schedule 2 are revoked with effect from the appointed day.

Existing laws

141.—(1) Subject to this section, the existing laws shall have effect on and after the appointed day as if they had been made in pursuance of or in consistency with this Constitution and shall be

(a) New section proposed by UK, based on BVI Constitution section 108, Montserrat Constitution section 97, and TCI Constitution section 125.

(b) New essential chapter proposed by UK, based on BVI Constitution Chapter 10 and Montserrat Constitution sections 115 to 121.

construed with such adaptations, modifications, qualifications and exceptions as may be necessary to bring them into conformity with this Constitution.

(2) The Legislature may by law make such amendments to any existing law as appear to it to be necessary or expedient for bringing that law into conformity with this Constitution or otherwise for giving effect to this Constitution; and any existing law shall have effect accordingly from such day, not being earlier than the appointed day, as may be specified in the law made by the Legislature.

(3) In this section “existing laws” means laws and instruments (other than Acts of the Parliament of the United Kingdom and instruments made under them) having effect as part of the law of Anguilla immediately before the appointed day.

Existing offices and officers

142.—(1) Any office established by or under the Anguilla Constitution Order 1982(a) and existing immediately before the appointed day shall on and after that day, so far as consistent with this Constitution, continue as if it had been established by or under this Constitution.

(2) Any person who immediately before the appointed day holds or is acting in any office continued by virtue of subsection (1) shall, on and after that day, continue to hold or act in that office as if he or she had been appointed to hold or act in it in accordance with or under this Constitution.

(3) Any person to whom subsection (2) applies who, before the appointed day, has made any oath or affirmation required to be made before assuming the functions of his or her office shall be deemed to have made any like oath or affirmation so required by this Constitution or any other law.

Director of Public Prosecutions

143. Until a person is appointed to the office of Director of Public Prosecutions in accordance with this Constitution, the Attorney-General shall perform the functions of that office.

House of Assembly

144.—(1) Every person who immediately before the appointed day is a member of the House of Assembly established by the former Constitution shall on that day become a member of the House of Assembly, shall be deemed to have complied with section 85 and shall hold his or her seat in accordance with this Constitution.

(2) The Standing Orders of the House of Assembly established by the former Constitution as in force immediately before the appointed day shall, except as may be provided under section 73, have effect on and after that day as if they had been made under that section as Standing Orders of the House of Assembly, but they shall be construed with such adaptations and modifications as may be necessary to bring them into conformity with this Constitution.

(3) In this section “former Constitution” means the Constitution set out in the Schedule to the Anguilla Constitution Order 1982.

Power reserved to Her Majesty

145. There is reserved to Her Majesty full power to make laws for the peace, order and good government of Anguilla.

Richard Tilbrook
Clerk of the Privy Council

(a) S.I. 1982/334, amended by S.I. 1983/1108, 1990/587, 2017/181, 2019/852, 2019/1461 and 2020/XXXX. [The final reference is to the Order that will update the group of persons eligible to hold the office of Deputy Speaker].

SCHEDULE 1

Sections 31(4), 33(2),
46, and 85

Forms of Oaths and Affirmations

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.

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.

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.

SCHEDULE 2

Section 140

Revocations

The Anguilla Constitution Order 1982 (S.I. 1982/334)

The Anguilla Constitution (Amendment) Order 1983 (S.I. 1983/1108)

The Anguilla Constitution (Amendment) Order 1990 (S.I. 1990/587)

The Emergency Powers (Overseas Territories) Order 2017, article 12(3) (S.I. 2017/181)

The Anguilla Constitution (Amendment) Order 2019 (S.I. 2019/852)

The Anguilla Constitution (Amendment) (No. 2) Order 2019 (S.I. 2019/1461)

[The Anguilla Constitution (Amendment) Order 2020 (S.I. 2020/XXXX)](a)

(a) Although not discussed during the negotiations, this references the Order in Council that will amend provisions on the Deputy Speaker.