

# ANGUILLA

## CONSTITUTIONAL & ELECTORAL REFORM COMMISSION

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### REPORT

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Dated 25 August 2006

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**Don Mitchell, CBE, QC**  
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**Grace Carty**  
Member

## CONSTITUTIONAL & ELECTORAL REFORM COMMISSION



25 August 2006

His Excellency the Governor  
Mr Andrew George  
Government House  
Old Ta  
Anguilla

Your Excellency,

### FINAL DRAFT OF AGREED REPORT

We are pleased to deliver herewith 20 copies of the final draft of our agreed Report for distribution as you see fit.

We started our work in February of this year and have ended it in August, just one month over our recommended timeframe.

A detailed analysis of how we proceeded to carry out our task is to be found in the part titled *Methodology*. Our recommendations are set out in the part titled *Recommendations* in paragraphs closely following the various sections of the Constitution.

We are grateful for having been given the opportunity to have served, and we hope that our efforts will prove to have been useful.

Yours sincerely,

Don Mitchell CBE QC

Chanelle Petty Barrett

Calvert Carty

Grace Carty

Claudiel VV Romney

Rev Cecil OA Weekes



## INTRODUCTION

1. We need to reflect for a moment on Anguilla's progress over the years, with emphasis on our constitutional advancement. To see the progress that we have made, it will be necessary to look in some detail at where we have come from. The old cliché is that only then will we appreciate where it is that we have arrived at, and perhaps perceive where it is that we are going to.
2. **Settlement.** The modern history of Anguilla begins in the year 1650<sup>1</sup>. The first group of settlers arrived from St Kitts with the intention of occupying the island as an English colony<sup>2</sup>. It was a private initiative of the settlers. There was no official encouragement<sup>3</sup>. By contrast, the settlement of first, St Christopher<sup>4</sup> in 1623, and later of Nevis in 1628, Antigua in 1632, and Montserrat in 1633 had all been covered by commission from either the King or the Governor in Chief.
3. **First Deputy Governor.** After nearly two decades without any local leadership, the Anguillians elected a local settler, Abraham Howell, to be their deputy governor<sup>5</sup> in the year 1667. There is no indication that he or any other later deputy governor of Anguilla was ever given any patent or official document of appointment. The Anguillians were permitted to nominate their own deputy governor right up to the day in 1825 when the last one gave up his position as the island was absorbed into St Kitts.
4. **Lack of Proper Government.** The failure of the colonial authorities to interfere in the government of Anguilla at the time is not a matter for self-congratulation. It is evidence of the poverty of and lack of official interest in the island. No Governor in Chief was even to visit Anguilla for over 75 years after the first settlement. The islanders exported no crops or other primary product to Britain to contribute to the imperial economy, nor did it serve any strategic purpose. Its settlers were considered of so little account that the authorities in both Antigua, the head of government, and London, could not be bothered to make any arrangement during the period of 175 years for its proper administration. The consequence has been a simmering sense in Anguilla of abandonment by all

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<sup>1</sup> The historical information is taken from Don Mitchell, Anguilla: From the Archives (unpublished manuscript).

<sup>2</sup> An "English" colony and not "British" because Britain was not to come into existence until the Act of Union of 1707 joined England to Scotland as one country.

<sup>3</sup> Robert Southey: Chronological History of the West Indies, Vol 1, p.328.

<sup>4</sup> St Christopher was not to be called "St Kitts" until the time of Christopher Codrington Sr and his son Christopher Codrington Jr. They both served as Governor in Chief of the Leeward Islands in 1689-1698 and 1698-1704 respectively. They were nicknamed "Kit", and during their 15-year tenure the island's name underwent this change in honour of them, at first informally and eventually in virtually all communications.

<sup>5</sup> In a document now lost, but quoted by Dr Jones in his Annals of Anguilla, Howell recorded that he had been elected in 1666 "by the inhabitants of Anguilla to be the deputy governor until some lawfully constituted authority should take the burden of office". In his 1673 patent to Ensign Thomas Rumney of Blown Point Plantation, he claims to have been appointed deputy governor by Governor Stapleton sometime in 1672. His name repeatedly crops up in the official records as deputy governor for Anguilla until about the year 1685, after which he appears only as a private citizen. His appointment was probably revoked by Governor Codrington in about 1689 and George Leonard appointed in his place.



outside authorities, and a deep seated awareness of the need for self-reliance, that characterise the Anguillian political psyche to this day. Evidence of the low regard in which Anguilla was held by the colonial authorities abound in the records. So, in 1666:

*'Tis not worth keeping<sup>6</sup>.*

And in 1676:

*a barren, rocky island, ill-settled by the English, and of small consequence . . .<sup>7</sup>*

And again the same year:

*. . . Anguilla never being surveyed, there can be no account given, neither is it material, being fitter for to raise stocks of cattle than to yield any great produce of sugar or any other commodities of the growth of these parts, because the land manurable is not of a capacity to entertain many hands for planting or for their own defence<sup>8</sup>.*

And in 1680:

*It were to be wished that . . . Anguilla were as much under water as above it<sup>9</sup>.*

<sup>6</sup> Lord Willoughby to the Lords of Trade, CO.1/22.

<sup>7</sup> CO.153/2: Philip Warner: Account of the Caribbee Islands.

<sup>8</sup> CO.153/2. Governor William Stapleton of 22 November 1676 to the Board.

<sup>9</sup> CO.1/44 No 9: Stapleton to the Committee on 18 May 1680.



And in 1683:

*'Tis fit for little but goats<sup>10</sup>.*

And in 1701:

*Anguilla hath so few inhabitants, and most of them so poor, that whosoever hath, or will have it, will be very little the better for it<sup>11</sup>.*

And again that year:

*. . . the men of Anguilla are perfect outlaws<sup>12</sup>.*

And in 1709:

*The people live there like savages, without order or government. They have neither lawyer nor parson among them. They give themselves in marriage to each other. They only think themselves Christians because they are descended from Christians<sup>13</sup>.*

And in 1724:

*. . . The first island that I visited was Anguilla, which I found to be a poor and barren place, and the inhabitants in their houses, clothing and diet bore all the marks of poverty. Nor is it capable of any further improvement. The like may be said of Spanish Town. And upon enquiring how they first came to settle these miserable islands I found that the first inhabitants were such as had fled from Barbados and others of the greater islands of this government for debt or to avoid punishment for their crimes, and have since been increased by pirates who have come in upon Acts of Grace and are married and settled there, whose posterity not knowing the world, remain there and cultivate the ground for a wretched subsistence . . .<sup>14</sup>*

Of the authority of the deputy governor of Anguilla, he said:

*If his cudgel happens to be one whit less than a sturdy subject's, good night, governor!*

And in 1734:

*They live like so many bandits, in open defiance of the laws of God and men<sup>15</sup>.*

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<sup>10</sup> CO.1/51 No 9: Stapleton to the Committee.

<sup>11</sup> CO.152/4: John Fox to the Council of 11 July 1701.

<sup>12</sup> CO.152/4: Governor Christopher Codrington to the Council.

<sup>13</sup> CO.152/8: Col Daniel Parke to the Council.

<sup>14</sup> CO.153/14. Governor John Hart to the Council of 12 July 1724.

<sup>15</sup> CO.152/21: Governor William Matthew of 17 June 1734 to the Council.

5. An unsympathetic English economist wrote a few years later how the lives of the Anguillians of his day had not improved from the earliest days of settlement. Of the early settlers he wrote:

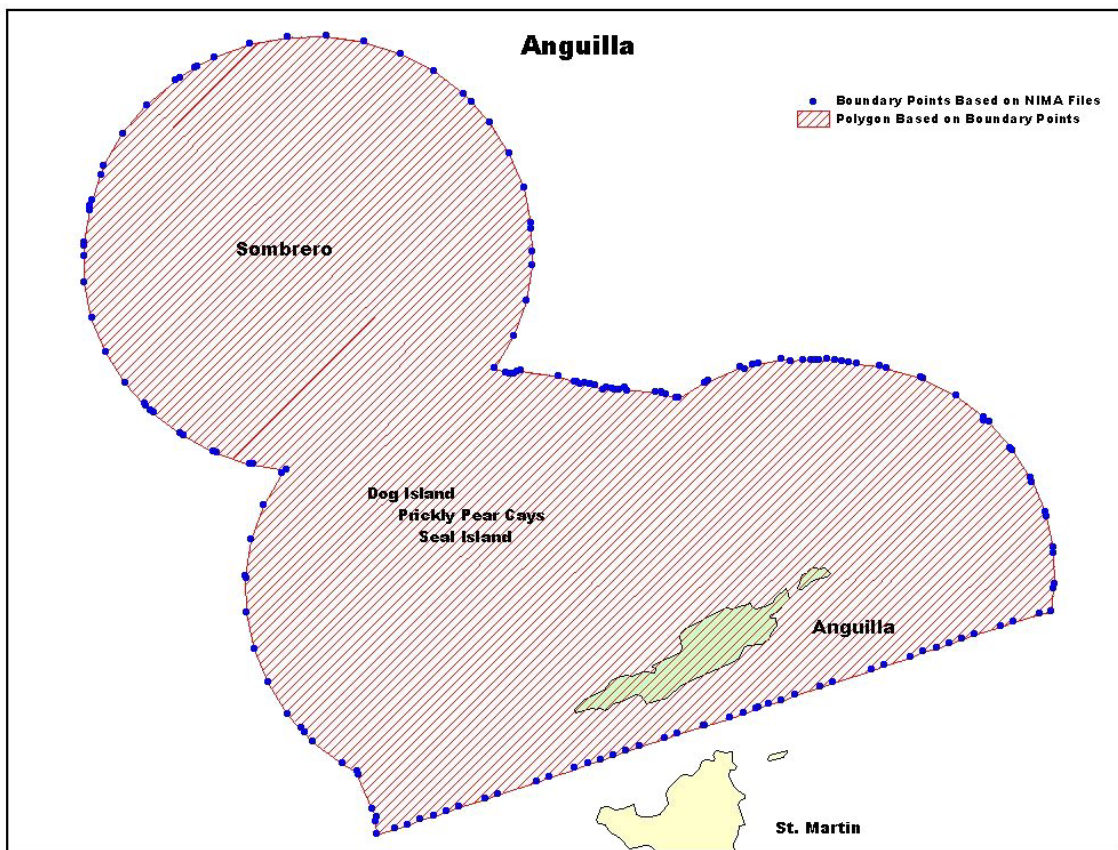
*Their business . . . was to plant corn, and breed tame cattle, for which purpose they brought stock with them. They were poor and continue so to this day, being perhaps the laziest creatures in the world. Some people have gone from Barbados, and the other English Charibbee Islands, thither, and there they live like the first race of men, without government or religion, having no minister nor governor, no magistrates, no law, and no property worth keeping. If a French author is to be believed . . . 'The island is not thought worth the trouble of defending or cultivating it'. In which perhaps the Frenchman is out, for the soil being good, if an industrious people were in possession of it, they would soon make it worth defending<sup>16</sup>.*

6. **Legislative Assembly.** We have seen that the Governors in Chief made a token gesture at establishing some sort of government for Anguilla by unofficially appointing a deputy governor from time to time. An Executive Council of sorts was similarly recognised by the Governor. But, this never had any authority backed by law. An essential institution of government was the Assembly. Governor Stapleton described how the Assemblies of the Leeward Islands worked in the 1680s<sup>17</sup>. The planters and merchants of each parish elected two representatives. The Assemblies made local laws. These had to be assented to by the deputy governor. He had the power of veto. They were transmitted to the Governor in Chief for submission to the Council in London. They remained in force for only two years unless the Royal Assent was given. Annual sessions of the Assembly were a necessity as financial bills lasted for one year only. Both Council and Assembly represented, needless to say, chiefly the interests of the major planters and merchants, not of the average free blacks, coloureds or whites, and definitely not of the slaves. However, no form of Assembly was ever established for Anguilla. Neither during the Seventeenth, Eighteenth, nor Nineteenth Centuries did Anguilla have an Assembly to enact local laws. Laws made by other islands did not apply to Anguilla. Anguilla remained a lawless frontier settlement well into the Nineteenth Century. The Council of Anguilla, when it was eventually established in the Eighteenth Century, acted as legislature, executive, and judiciary, a situation to the advantage of the most powerful planters and merchants and no one else.

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<sup>16</sup> John Oldmixon, The British Empire in America, Vol 2, pp264-265, published in 1741.

<sup>17</sup> CO.153/2: Stapleton to the Council.



7. The Anguillians of the Seventeenth and Eighteenth Centuries reciprocated the abandonment the authorities extended to them. They moved freely between the Dutch, French and Danish territories as if these were mere extensions of Anguilla. The islanders depended on inter-island trading in their sloops and schooners, a little salt picking and growing of tobacco and cotton, and the growing and export of vegetables and small-stock for export to St Kitts and other near-by islands as cash crops. Anguillian sloops connected Anguilla with St Martin and St Croix where so many of the local families had family and business connections. In the beginning, her sloops brought valuable dye woods and building timbers from the forests of Crab Island and St Croix to the merchants of the Leewards. Later in the Eighteenth Century, they traded as far as New York and London. They traded from one island to the other, regardless of the Navigation Acts and customs duties. The Anguillians made their own laws and elected their own governors. They were polite enough, but they did not blindly obey the instructions of a distant governor. When those instructions ran contrary to their vital interests, they ignored them without hesitation. The early settlers built the foundation of the present tradition of complete irreverence for all national boundaries and customs barriers that characterize the best Anguillian merchants of today.
  
8. After the first visit of the Governor in Chief in 1724, none was to visit Anguilla again in the period before the American Revolution of 1776. A recommendation of 1734 that Anguilla be given some sort of judicature and legislature did not have any effect. No judge was to visit Anguilla until 1825. From that year, a judge from St Kitts began to visit Anguilla and to hold circuits for the trial of felonies.

9. **Sugar.** By 1725, sugar cane agriculture had come to Anguilla. The sugar industry of Anguilla was short-lived, lasting only until the American Revolution of 1776, a mere 50 years. The industry was never as successful as it was in the wetter, more prosperous islands. The absence of windmill ruins bears testimony to the lack of capital invested in the industry. The animal-round was the normal source of power for crushing the canes. The boiling houses and curing houses were small and insubstantial, and few of their ruins remain at this time.
10. **Slavery.** From the earliest days of settlement there were slaves present on the island. The system of slavery existed in Anguilla in all its gory detail from the earliest days of settlement until its final abolition throughout the Empire in 1839. Many examples of the brutality of the system, and of the times, can be found in the records.
11. **Collapse of the Economy.** The American Revolution of 1776 brought an end to any hope of prosperity for Anguilla in the Nineteenth Century. The Revolution resulted in war in the West Indies. The Royal Navy under Admiral Rodney blockaded all trade with the rebelling northern colonies. Then as now, Anguilla only survived by trade. Anguilla's economy was devastated by the blockade. While before 1776 law suits for hundreds of pounds local currency were common, after that date the records show mainly debts of a few shillings being squabbled over in court. Most of the planters emigrated. Anguilla could no longer maintain a pretence of a Council.
12. **Absorption by St Kitts.** Under pressure from both London and the Governor in Chief, in 1825 the inhabitants of Anguilla consented to the abolition of their Council. They agreed that the Assembly of St Kitts should make laws to apply in Anguilla. The Anguilla Act<sup>18</sup> of 1825 of the St Kitts Assembly gave the freeholders of Anguilla the right to send up a representative. The colony was now known as "St Christopher and Anguilla". No law affecting Anguilla could be passed except in the presence of the Anguilla representative. We gave up the right to our own deputy governor. Our officials were to be appointed from St Kitts from then on. The St Kitts Assembly took on responsibility for Anguilla very reluctantly and only under pressure from the Colonial authorities. They made it clear to the Governor in Chief in repeated resolutions of the Assembly that no part of the cost of administering Anguilla would be borne by the St Kitts population. The Anguillian representative would not be permitted to have any authority in St Kitts. Anguilla's first representative, Dr Benjamin Hodge-Gumbs, was made to sign a letter giving up his right to be the President of the St Kitts Assembly in the event that he should after a period of time become the most senior representative.
13. **First Petition for Separation.** It did not take long for the people of Anguilla to become dissatisfied with government from St Kitts. In 1825 the inhabitants sent an address to Gov Maxwell complaining about an Act of the St Kitts Assembly that had reduced the power of the Vestry and transferred them to the St Kitts Government. They wrote:

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<sup>18</sup> The Anguilla Act, No 21 of 1825

*Can we indulge a hope that laws enacted for this community, can and will be made with much regard to its interests; when they are passed by a body of men living in a distinct and remote island, possessing no property of any kind here and having no connection or relation whatever?*<sup>19</sup>

This time they were not ignored. They got back the Vestry in 1827.<sup>20</sup>

14. Local government came to Anguilla by the Vestry Act of 1827. The Vestry comprised eleven elected members and two *ex officio* in the persons of the rector of the parish and the stipendiary magistrate who acted as chairman. The Vestry gave the Anguillians the power to administer local affairs such as the condition of the roads and the state of the wells. As the island was so poor, taxes proved impossible to collect and the island sank into greater and greater neglect until the Vestry ceased to function for all practical purposes.

15. **Second Petition**<sup>21</sup>. In 1871 the Leeward Islands were federated by an Act of the Leeward Islands Assembly of that year. Anguillians realised that they would be combined in the "Presidency of St Christopher and Anguilla". They submitted a memorandum to the Earl of Kimberly, the Secretary of State for the Colonies opposing the plan. They complained among other things that:

*We watch with the greatest apprehension what appears to be the imminent decadence of an Island which for many years past has held a prominent position among the Islands of this Government for prosperity, good order and self reliance . . .*

They proposed that:

*. . . we may be allowed to revert to our former system namely a lieutenant governor (whose salary should be defrayed from the local Treasury) with an Administrative Committee, a form of government that gave satisfaction to all classes of the community and under which we enjoyed the greatest amount of prosperity*<sup>22</sup>.

There is no indication in the records that the Anguillians ever received any response to this petition. Certainly no attention was paid to their concerns, as Anguilla duly entered the new Federation attached to St Kitts.

16. **Third Petition**. The Anguillians continued to complain about the remoteness of, and unsatisfactory nature of government from, St Kitts. On 23 August 1872 they petitioned the Colonial Office:

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<sup>19</sup> CO.239/12. Petition of 10 March 1825.

<sup>20</sup> CO.241/26. Minutes of the Assembly of 15 November 1827.

<sup>21</sup> For the modern political era we are indebted to the studies of Colville Petty. See for example, his *Anguilla: Where There's a Will There's a Way*, from which most of the ensuing analysis of Anguilla's successive Constitutions and the modern political history of the island is taken.

<sup>22</sup> Nat Hodge, Ed, *30<sup>th</sup> Anniversary of the Anguilla Revolution, 1967-1997: Remembering Our Past, Building Our Future*.

*The interest of Anguilla, its resources and capabilities of development are not understood . . . by the legislative body of St Christopher who are utter strangers to us, ignorant of the community, careless of their wants, and therefore unequal to discharge . . . the important duties of legislation for us . . . This legislative dependence on St Kitts can in no sense be called a legislative union, it has operated and continues to operate most injuriously against us, and is mutually disliked<sup>23</sup>.*

17. By 1882 the economy of Nevis had disintegrated. Its Council was dissolved and the island was merged with St Kitts and Anguilla. The Presidency was now known as “St Christopher and Nevis”. The name of Anguilla was simply dropped. The Anguilla Vestry was abolished, and the Magistrate was appointed to oversee the day-to-day running of the island. Local government in Anguilla had disappeared.
18. The name of Anguilla was not returned to the official title of the Presidency until 1951. In that year a new constitution was provided granting universal adult suffrage for the first time. In 1956 the Leeward Islands Federation was dissolved, the Presidencies were abolished, and the colony became known as “St Christopher, Nevis and Anguilla”.
19. **Fourth Petition.** The situation remained unaltered throughout the first half of the Twentieth Century. In 1958 the Anguillians continued to suffer under a very low standard of living. Discontent with government from St Kitts peaked again. The result was another petition to the Governor of the Leeward Islands requesting him to:

*. . . make every exertion which lies in your power to bring about the dissolution of the present political and administrative association of Anguilla with St Kitts<sup>24</sup>.*

And warning:

*A people cannot live without hope for long without erupting socially; and it is because the people of Anguilla prefer petition to eruption that we now implore Your Excellency to use your best endeavours with the Secretary of State for the Colonies . . . to have Anguilla created a grant-aided colony, emancipated from the dead hand of the political leaders of St Kitts . . . We know that Anguilla must have at least an economic horizon to bolster a petition of this sort, but paradoxically such a horizon can never, never appear unless the island is free of St Kitts politics whose avowed intent it is to withhold from Anguilla even the ordinary amenities of modern civilised life.<sup>25</sup>*

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<sup>23</sup> Petty, *Where There's a Will*, p. 11.

<sup>24</sup> *Report of the Commission of Inquiry to Examine the Anguilla Problem*. HMSO, London, 1970. Cmnd 4510, p. 76, also known as the “Wooding Report”.

<sup>25</sup> Wooding Report, *ibid*, p. 78.

20. **Associated Statehood.** With the dissolution of the short-lived West Indies Federation in 1962 the islands reverted to colonial status for a short period. Britain and the Leeward and Windward Islands agreed to the creation of Statehood in Association with Britain, envisaged as a first step to independence. This relationship gave the Associated States full internal self-government, with Britain reserving only defence and external affairs.



21. During 1966 a new Constitution for the creation of the Associated State of St Kitts, Nevis and Anguilla was discussed in London. Against the background of Anguilla's persistent demand for a break from St Kitts, one of the proposals discussed was the establishment of local government in Anguilla. The St Kitts government at last attempted to come to grips with a situation that it had too often in the past brushed aside. It agreed that the 1967 Constitution should contain a provision for Anguilla, and Nevis, to enjoy a degree of local government. The experiment was not to succeed. The St Kitts government never had any intention of permitting the Anguillians any real degree of internal self-government. This failure led to the mounting of a campaign<sup>26</sup> against Statehood<sup>27</sup>.

22. **Anguilla Revolution.** Despite the objections of the Anguillians, on 26 February 1967 St Kitts, Nevis and Anguilla became an Associated State. On 27 February the Constitution of the Associated State came into effect<sup>28</sup>. Anguilla refused to go into this status, and the Anguilla Revolution of 1967 commenced. On 8 March the Government House was burned to the ground and the Warden fled to St Kitts the next day. On 29 May at a meeting in the Park, the crowd voted by a show of hands to expel the St Kitts policemen from the island. The crowd left the Park in procession and marched to Police Headquarters where they ordered the police to leave Anguilla by 10:00 am the following day. The following morning the policemen were advised that a plane was ready to take them to St Kitts, and by noon they were all disarmed and expelled from Anguilla.



23. **The Peace-keeping Committee.** On 31 May 1967, the Anguillians established a Peace-keeping Committee<sup>29</sup> to manage the island's affairs. The same day, a

<sup>26</sup> Led by such men as Ronald Webster, Atlin Harrigan and John Rogers.

<sup>27</sup> Report of the Commonwealth Conference on Anguilla, HMSO, London, 1967. Cmnd 3433.

<sup>28</sup> The Saint Christopher, Nevis and Anguilla Constitution Order 1967, SI 1967 No 228.

<sup>29</sup> It comprised Walter Hodge as Chairman, Peter Adams, Atlin Harrigan, Alfred Webster, James Baird, John Rogers, Clifford Rogers, Ronald Webster, Wallace Rey, Camile Connor, Phillip Lloyd, Charles Fleming, Wallace Richardson, Mac Connor, and Emile Gumbs as members.

delegation<sup>30</sup> was sent to St Kitts to search for a peaceful solution. They presented a memorandum to the Governor which read in part:

*Anguillians do not want to be a part of the State of St Christopher-Nevis-Anguilla. The time when they might have accepted this is past. What they now want is separation from St Kitts. They want a process set in motion now which will give them separation and self-determination within twelve months. By the end of this time they want to be a State in Association with Britain.*<sup>31</sup>

24. **Attack on St Kitts.** The response of the St Kitts government was immediate. A state of emergency was declared and regional governments were requested to send military assistance to put down the rebellion. The Anguilla Revolution was well under way. The Anguillians took the view that the best form of defence was attack. In the early hours of the morning of 10 June, a party of armed Anguillians<sup>32</sup> landed in St Kitts and attacked the Police Headquarters, the Defence Force Headquarters, and the power station. The attack was a failure due to the small size of the Anguillian force, and the failure of the promised uprising by Kittitians against their own government. Nonetheless, the attack served Anguilla well in that the St Kitts Defence Force concentrated on the defence of St Kitts, and never mounted an attack on Anguilla in response.
25. **Referendum on Secession.** Between 1967 and 1971, the British Government tried to persuade Anguilla to return to the Associated State. The St Kitts government insisted that the Anguilla Revolution had no legitimacy and was not supported by the majority of residents. The response of the Peace-keeping Committee was to hold a referendum on secession from St Kitts on 11 July 1967. The result was an overwhelming vote (1,813 to 5) in favour of secession.
26. **First Constitution.** A further step towards legitimising the Revolution was the preparation of a Constitution. Dr Roger Fisher, a professor of law at Harvard University, agreed to help. He drafted an eleven-section Constitution which provided for the creation of an Anguilla Council with full legislative and executive powers. There were to be five elected and two nominated members. This was Anguilla's first Constitution of the modern era.
27. **First Anguilla Council.** The Fisher Constitution appointed the first members of the Council who were to hold office until elections could be held not later than July 1968<sup>33</sup>.
28. **Second Anguilla Council.** While the Caribbean governments fussed and disagreed among themselves on the best way to resolve the Anguilla crisis, the Anguillians went about preparing for the first elections under their new Constitution. The Beacon Newspaper of 7 October 1967 published a notice

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<sup>30</sup> It comprised Rev Leonard Carty, Rev Martin Roberts, Peter Adams, and Conrad Walton Fleming.

<sup>31</sup> Wooding Report, op cit, p.84.

<sup>32</sup> Including Todville Harrigan, Mitchell Harrigan, Collins Hodge, and Lemuel Phillip among others.

<sup>33</sup> Those appointed were Rev Leonard Carty, Ronald Webster, John Rogers, Peter Adams, Walter Hodge, Emile Gumbs, and John Hodge.



advising the electorate that nomination day was fixed for 17 October and that elections were scheduled for 25 October. All Anguillians holding foreign passports were specifically allowed to vote, and civil servants were allowed to contest a seat. When nominations closed on 17 October, five of Ronald Webster's candidates stood unopposed. Two candidates<sup>34</sup> withdrew from the contest. The five remaining candidates were declared to be duly elected Councilors<sup>35</sup>. They formed the Second Anguilla Council.

29. When the new Council met on 21 October, Ronald Webster was elected Chairman and Campbell Fleming and John Rogers were named as Nominated Members. At a meeting at the Park the following day, Ronald Webster told the crowd that Anguilla was looking for some sort of associated status with Britain or some other Commonwealth country. He emphasised that:

*Total independence is only a last resort if all negotiations fail.*<sup>36</sup>

30. **United Nations.** The Anguillian leaders were also interested in some form of relationship with the United Nations. Professor Fisher wrote a letter of 24 October to the Secretary General appealing for an administrator, an expert in telecommunications, and a financial adviser for Anguilla<sup>37</sup>. His letter was followed up with a meeting by Professor Fisher and Jeremiah Gumbs with the UN Special Committee on Colonialism. The British Government took the view that the Committee of Twenty-four was incompetent to discuss the affairs of an Associated State and refused to participate in the discussions. The Committee decided to send a mission to Anguilla to investigate, but it was unable to visit because the British Government withheld consent.
31. **Senior British Official.** On 8 January 1968, direct participation of Britain in the administration of Anguilla began with the consent of the St Kitts Government and the Anguilla Council with the arrival of Mr Tony Lee. This was intended to be for what was described as the Interim Period of twelve months.
32. **Advisory Board.** In March the Anguilla Council set up an Advisory Board of fourteen members to assist with the running of the island's affairs<sup>38</sup>.
33. **Third Anguilla Council.** On 30 July 1968 new elections were held. There were seven candidates, although the Constitution provided for only five<sup>39</sup>. Those elected formed the Third Anguilla Council. Negotiations continued between the Anguilla Council and the British and St Kitts governments. They all failed to resolve the crisis because the Anguillians were adamant that they would accept nothing short of complete separation from St Kitts. The British government

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<sup>34</sup> Camile Connor and Charles Fleming.

<sup>35</sup> They were Ronald Webster, Wallace Rey, Hugo Rey, Collins Hodge, and John Hodge.

<sup>36</sup> Beacon Newspaper, No 5, October 28, p. 1.

<sup>37</sup> Wooding Report, op cit, p. 34.

<sup>38</sup> The Advisory Board comprised Tony Lee, John Webster, Calvin Hodge, Emile Gumbs, Alfred Webster, Atlin Harrigan, Walter Hodge, Lucas Wilson, Camile Connor, Lewis Haskins, Joseph A Webster, Clement Daniels, Wallace Richardson, and Charles Fleming.

<sup>39</sup> Those elected were Ronald Webster, Atlin Harrigan, Kenneth Hazel, Collins Hodge, John Hodge, Wallace Rey, and Emile Gumbs.

insisted that under the West Indies Act 1967 they could not change the status of any part of an Associated State without the request and consent of the State legislature.

34. **End of Interim Period.** As the end of the Interim Period approached, the Anguilla leaders were split. One faction led by Atlin Harrigan favoured retaining an association with Britain. Another led by Ronald Webster and Wallace Rey favoured a unilateral declaration of independence. The Anguilla Council appealed to the British to extend the Interim Period, but the British refused and on 9 January 1969 Mr Lee departed. The St Kitts government responded to the intransigence of the Anguillians by suspending air and postal services and banning all trade save for food-stuffs and drugs.
35. **Unilateral Declaration of Independence.** In the perceived face of rejection by the British Government the Anguilla Council prepared to hold a referendum on independence. Roger Fisher was instructed to draft a Republican Constitution. Another and much less reputable US citizen living at the time in Anguilla and advising the Council, Jack Holcomb, came up with a different version. The Holcomb Constitution was duly approved by the Council and put to the people on 6 February 1969. The result was 1,739 votes in favour of independence and 4 against.
36. **Second Constitution.** Jack Holcomb's Republican Constitution provided for the island to be divided into three constituencies each of which would elect two candidates, and five candidates at large. The President and Vice-President were to be elected in a national election. Elections for the Legislature were to be held on 25 March 1969, while those for the President and Vice President were to be on 3 April. This was Anguilla's second Constitution of the modern era.
37. **Republic of Anguilla.** When nominations closed on 21 February, Ronald Webster was unopposed and was declared President of the Republic of Anguilla. He chose as his Vice-President Mr Campbell Fleming. Webster's Cabinet was to include John Webster (a former Secretary of Defence) as Secretary of State for Domestic Affairs and Jeremiah Gumbs as Secretary of State for Foreign Affairs. On nomination day only six candidates were nominated and they were similarly declared elected unopposed<sup>40</sup>.
38. **William Whitlock's Expulsion.** On 11 March 1969 a British envoy, Mr William Whitlock, arrived in Anguilla with proposals for a solution to the Anguilla crisis. His visit was spurred by a resolution passed in Trinidad at the just concluded Fifth Conference of Heads of Government of the Commonwealth Caribbean Countries. This called on Britain to take all necessary steps to confirm the



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<sup>40</sup> They were Winston Harrigan, Lucas Wilson, Uriel Sasso, James Woods, Charles Fleming, and Mac Connor.

territorial integrity of St Kitts-Nevis-Anguilla<sup>41</sup>. The British proposal brought by Whitlock was that Anguilla should be administered by Tony Lee as Commissioner to serve for so long as the present difficult situation continued. He would appoint an Advisory Committee to assist him in his capacity as Her Majesty's Commissioner. These proposals were unacceptable to the Anguillian leaders, and Whitlock was expelled from the island.

39. **British Invasion.** During the early hours of 19 March 1969 some four hundred British paratroopers, marines and London policemen landed. The local defence force had handed in their arms the evening before as it had been realised that resistance would be futile and would lead to unnecessary loss of blood. The rebellion was crushed without either side firing a shot. The invading forces distributed a leaflet that contained the fateful line:

*It is not our purpose to force you to return to an Administration you do not want.*

Tony Lee was appointed the first Commissioner and Britain's direct administration of the island began.

40. **Third Constitution.** Tony Lee was appointed under an Order in Council<sup>42</sup> of 18 March which authorised him to make by regulation provision for securing and maintaining public safety and public order in Anguilla as part of the Associated State. It gave him sweeping powers to amend, suspend or revoke any law in Anguilla other than the Constitution or the Courts Order. This was the first British Constitutional document that related specifically to Anguilla since the first day of settlement in 1650. It was Anguilla's third Constitution of the modern era.

41. **Caradon Declaration.** Tony Lee's administration was not without opposition. There were several large demonstrations on the island demanding the withdrawal of British forces. Webster and the other leaders refused to cooperate with Lee. Representations were made to the United Nations. In an effort to defuse a highly explosive situation, the British Government dispatched its Ambassador to the United Nations, Lord Caradon, to Anguilla to work out an arrangement with the Anguilla Council. The result was the Caradon Declaration which was agreed upon by the Council. It provided for the administration of the island to be conducted by the Commissioner in full consultation and co-operation with the representatives of the people of Anguilla. The members of the 1968 Council were recognised as the elected representatives and were to serve as members of the Council. The Declaration repeated that it was no part of the purpose of the British Government to put the Anguillians under an Administration under which they did not want to live. After initial difficulties with establishing working relationships, Tony Lee left Anguilla on 20 April to be replaced by John Cumber who took the important step of recognising Ronald Webster as the leader of the Council.

42. **Wooding Commission.** On 18 December 1969 the British Government appointed a Commission of Inquiry under the chairmanship of Sir Hugh Wooding,

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<sup>41</sup> Wooding Report, op cit, p. 38.

<sup>42</sup> Anguilla (Temporary Provision) Order 1969.

Chief Justice of Trinidad and Tobago, to make recommendations for a satisfactory and durable solution to the Anguilla Crisis. By its terms of reference, The Commission was expressly required to find a solution that would “preserve the integrity of the State and prevent further fragmentation of the Caribbean”. Not surprisingly, the Commission’s Report concluded that while reversion to colonial status was out of the question, independence for such a small community was equally unrealistic. The only solution that could be recommended was the preservation of the State under an arrangement which gave the Anguillians a large measure of control over their own affairs. The Anguilla Council immediately passed a resolution rejecting the Report. They would accept nothing less than a complete break with St Kitts.

43. **Godber Proposals.** With a change in government in London in 1971 the British Government gradually became more sympathetic to the Anguillian cause, and the Wooding Report became a dead letter. In July 1971, Joseph Godber, the new Minister of State for Foreign and Commonwealth Affairs, put to the St Kitts Government a proposal that the State Government delegate to HMG powers which would enable the Commissioner to administer the island for a period of years. The St Kitts Government insisted that the Anguillians were rebels and the British must force them back into the fold of St Kitts-Nevis-Anguilla. Gun-boats should be sent to do this and measures should be taken to starve the islanders into submission<sup>43</sup>. On the other hand, the Anguillians were prepared to accept nothing short of complete separation from the Associated State. The British were forced to act unilaterally. Their proposals for an interim settlement were accepted by the Anguilla Council. In the words of Ronald Webster:

*Anguillians have just accepted Britain to be their partner to work together from now onwards . . . let us move forward together to develop Anguilla.*<sup>44</sup>

44. **Reversion to British Administration.** Purporting to act under the provisions of section 3<sup>45</sup> of the West Indies Act, the British Parliament passed<sup>46</sup> the Anguilla Act 1971<sup>47</sup> to permit it to administer Anguilla. The Act took effect on 27 July 1971. It permitted HMG in Council to make detailed provision for the administration of Anguilla. HMG was to appoint a Commissioner in Anguilla. The island would cease to be a part of the Associated State in the event of the introduction into the State’s legislature of a Bill for a law terminating the status of association with the UK.

45. The St Kitts Government never accepted that this was a legitimate use of section 3 of the West Indies Act. The West Indies Act permitted the UK Parliament to pass legislation for the West Indies after associated status was created and conferred on the islands in 1967 only in the exercise of the reserved powers of the UK in the sphere of external affairs and defence. The Act itself declared that no future Act of the UK Parliament could again extend to any of the Associated

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<sup>43</sup> The Star, Jamaica, 9 December 1970.

<sup>44</sup> Trinidad Guardian, 25 June 1971, p. 1.

<sup>45</sup> Which permitted Britain to intervene in an Associated State in future only in case of external threat and matters of that sort.

<sup>46</sup> This was done under the authority of the West Indies Act 1967, section 3(2).

<sup>47</sup> 1971 c.63.

States as part of its law unless the Act expressly declared that the State has requested and consented to it being enacted. This had clearly not happened in the case of the Anguilla Act of 1971 which had been passed despite the opposition of the St Kitts Government.

46. The decision of the British Government to proceed unilaterally in this way met with strong condemnation from Caribbean Governments and newspapers. Their reaction prompted the leader of the Anguilla Council, Ronald Webster, to publish a letter in The Times urging the Commonwealth Caribbean countries:

*not to interfere in a situation which does not concern them and towards the solution of which they have made no worthwhile contribution.*<sup>48</sup>

47. **Fourth Constitution.** The Anguilla (Administration) Order 1971<sup>49</sup> was made under the Anguilla Act of the same year. If one ignores the repudiated 1967 Constitution, this was Anguilla's fourth modern Constitution<sup>50</sup>. It took effect on 4 August 1971. It made provision for the Commissioner to work in consultation with the Anguilla Council. This was to consist of seven elected members and up to six nominated members. The role of the Council was not spelled out in the Order, and the Commissioner was vested with complete legal control of the island. Mr Godber gave the Anguillians the assurance that the constitutional arrangements would be reviewed after three years. Anguillians accepted the Order as a temporary settlement even though it was within the framework of the Associated State. They recognised that it was setting the stage for the eventual separation of Anguilla from the rest of the State.<sup>51</sup>

48. **Fourth Anguilla Council.** The first general elections under the Administration Order took place on 24 July 1972. The result was the election of the fourth Anguilla Council of seven representatives<sup>52</sup>. Their complete lack of power caused the Anguilla Council to go on strike against the Commissioner. The situation was diffused by introducing a committee system whereby certain members of the Council became chairmen of departmental committees. However, when after three years the promised constitutional review did not take place, the Council went on strike again (for a period of fourteen months). Only when the British Government agreed to constitutional concessions did the Council resume work.

49. **Fifth Constitution.** Anguilla was one of three West Indian dependent territories given new Constitutions in 1976<sup>53</sup>. This 1976 Constitution<sup>54</sup> was negotiated by the Anguilla Council with representatives of the British Government during the "strike" of the previous year. It came into effect on 10 February 1976. It was only after the draft had been agreed with the British Government that the Anguilla

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<sup>48</sup> Trinidad Guardian, 30 June 1971, p. 2.

<sup>49</sup> Statutory Instrument 1971 No 1235.

<sup>50</sup> The first having been the Anguilla (Temporary Provision) Order 1969.

<sup>51</sup> Petty, *Where There's a Will*, op cit, p. 80.

<sup>52</sup> Those elected were Ronald Webster, Evans Harrigan, Reuben Hodge, Wallace Rey, Emile Gumbs, Camile Connor, and John Hodge.

<sup>53</sup> The others were Turks & Caicos Islands and the British Virgin Islands.

<sup>54</sup> Statutory Instrument 1976 No 50.

Council took steps to have its contents discussed in Anguilla. This caused a great deal of discontent on the island. The Order provided for the first time for a Ministerial form of government. The Executive Council comprised a Chief Minister and two other ministers and two ex-officio members, the Attorney-General and the Financial Secretary. It was chaired by the Commissioner. There was provision for a Legislative Assembly comprising the Commissioner as Speaker, three ex-officio members, namely the Chief Secretary, the Financial Secretary, and the Attorney-General, and not less than seven elected and two nominated members. The Commissioner was to consult with Executive Council in the formulation of policy and the exercise of all powers conferred upon him by the Constitution. However, he was not obliged to consult with respect to external affairs or internal security, nor on matters relating to the public service. This system extended to the local representatives some of the forms of power while ensuring that the British official retained the substance of power.<sup>55</sup> As Colville Petty puts it<sup>56</sup>:

*The Anguillians had fought for direct British Colonialism and they got it in heavy doses.*

The Anguilla (Constitution) Order 1976 was thus Anguilla's fifth modern Constitution. It recognised Anguilla to be still a part of the Associated State of St Kitts, Nevis and Anguilla. However, it was to be separately administered by Britain until such time as the constitutional crisis between Anguilla and the rest of the State could be resolved.

50. General elections under the 1976 Constitution were held on 15 March 1976<sup>57</sup>. Mr Webster was named Chief Minister, with Emile Gumbs and Albena Lake-Hodge his two ministers. Hubert Hughes was the lone opposition member. By early 1977 Mr Webster had lost the confidence of his government, and when at a 1 February 1977 meeting of the Legislative Assembly Mr Hughes introduced a motion of no confidence only Mr Webster did not support it. The Commissioner revoked Mr Webster's appointment. Due to the short period that had passed since the previous elections, and because the majority of the Assembly supported the appointment of Emile Gumbs, the Commissioner did not call new elections, but instead appointed Emile Gumbs to be the new Chief Minister. This government lasted until the general elections of 28 May 1980 when Mr Webster and his supporters won six of the seven seats, only Emile Gumbs of the previous administration retaining his seat<sup>58</sup>.

51. **The Anguilla Act 1980.** In February 1980 the Labour Party administration of Premier Lee Moore in St Kitts was defeated at the polls. The new premier Dr Kennedy Simmonds made it clear that his administration would put no obstacle in the way of change in Anguilla and the Anguillians should be free to decide their

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<sup>55</sup> Petty, *Where There's a Will*, op cit, p. 87.

<sup>56</sup> Petty, *Where There's a Will*, op cit, p. 88.

<sup>57</sup> Elected were Ronald Webster, Campbell Fleming, Idalia Gumbs, Albena Lake-Hodge, Emile Gumbs, Hubert Hughes, and John Hodge.

<sup>58</sup> Elected were Ronald Webster, Nashville Webster, Watkins Hodge, Claudius M Roberts, Emile Gumbs, Hubert Hughes, and Albert Hughes. Those nominated were Euton Smith and Connell Harrigan.

own constitutional future. The result was the Anguilla Act 1980<sup>59</sup> which empowered Her Majesty to separate Anguilla from the State on a day appointed by Order in Council. The Anguilla (Appointed Day) Order duly appointed 19 December 1980 as the day on which Anguilla ceased to be a part of the territory of the Associated State of St Christopher, Nevis and Anguilla.

52. Mr Webster's government of May 1980 lasted for barely a year before internal dissension brought it down. After a short period of political instability, he advised the Commissioner to dissolve the Assembly and to hold general elections on 22 June 1981<sup>60</sup>. Mr Webster won his seat and had the support of four of the newly elected representatives. The Commissioner asked him to form the new government. One of the objectives of the new government was to negotiate with the British Government for constitutional advance. Mr Webster was particularly concerned to ensure that the Constitution was amended to say that in the event of another vote of no confidence the Commissioner could not appoint a new Chief Minister but was obliged to call elections.
53. The possibility of constitutional advance was limited in view of the position of the British Government that if a territory aspired to autonomy it must call for independence and set a timetable. It was made clear that Associated Statehood was out of the question, and that any aspiration to such a status would be considered only in the framework of a call for independence<sup>61</sup>.
54. **Sixth Constitution.** Public consultation on revising the Constitution was non-existent. The Anguilla Constitution Order 1982<sup>62</sup> was enacted in London, and the new Constitution came into effect on 1 April 1982 only days after it was first seen by the public. This was Anguilla's sixth modern Constitution and the one under which we are presently governed. By one view it contains only minor<sup>63</sup> changes to the 1976 Constitution. Others criticize it as the abandonment of full internal self-government and a craven submission without consultation to naked colonial administration. The position of Commissioner was renamed "Governor" and the Legislative Assembly now became the "House of Assembly". Additionally, the Commissioner (Governor) ceased to sit as a member of the House of Assembly and the Speaker of the House was chosen by the House and not by the Governor. The new Constitution left the Governor's reserved powers virtually intact, though he was now required to consult the Chief Minister on matters relating to internal security and the public service. The Governor also had reserve power to legislate and to administer in case public order has broken down and a state of emergency exists. By section 3(1) Anguilla was brought back under the jurisdiction of the West Indies Associated States Supreme Court Order 1967<sup>64</sup>. This meant that Anguilla once again enjoyed the services of the

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<sup>59</sup> 1980 c.67.

<sup>60</sup> Those elected were Nashville Webster, Osborne Fleming, Victor Banks, Ronald Webster, Emile Gumbs, Maurice Connor, and John Hodge.

<sup>61</sup> White Paper on Anguilla: Constitutional Advance 1981, undated, p. 1. Cited at Petty, Where There's a Will, op cit, p. 120.

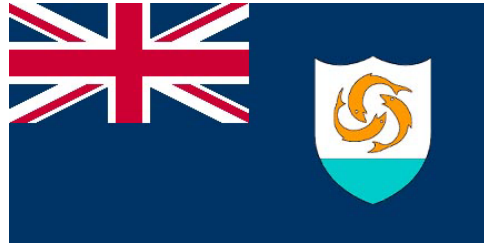
<sup>62</sup> Statutory Instrument 1982 No 334.

<sup>63</sup> Or "cosmetic" as Mr Petty calls them, Where There's a Will, op cit, p. 121.

<sup>64</sup> Statutory Instrument 1967/223.

regional court from which it had been excluded by the Anguilla Revolution of 1967.

55. **Anguilla Constitution (Amendment) Order 1990.** In line with local demands for increased autonomy, and after the new 1982 Constitution had been working for only three years, on 2 August 1985 the House of Assembly passed a motion for the Governor to set up a Constitution Review Committee. This Committee was appointed by the Governor in October 1985<sup>65</sup>. The Committee recommended<sup>66</sup> a number of changes to the 1982 Constitution. The result was the Anguilla Constitution (Amendment) Order 1990<sup>67</sup>. These included new provisions for the creation of the office of Leader of the Opposition and alteration of the definition of Belonger Status. This is the Constitution under which Anguilla is governed to this day.



56. **Rifkin Letter.** In the year 1996 great consternation was felt across Anguilla when a letter from Malcolm Rifkin, Secretary of State, dated 17 December 1996 was circulated. The letter proposed that the people of Anguilla had a stark choice. They must either opt to become an independent nation or they must remain a dependent territory of Britain with no expectation that the Governor's reserved powers could be reduced or whittled away from those he presently enjoyed or was entitled to enjoy<sup>68</sup>. The Rifkin letter proposed that in the future it might be necessary to extend the Governor's reserve powers, both executive and legislative, to include "good government." Good government is presently the province of the elected representatives both in the Executive Council and in the House of Assembly<sup>69</sup>. The Governor's reserved powers are limited to matters of defence, external affairs, security and the public service.
57. The publication of the letter was followed by extensive public debate and some public demonstrations. It was universally agreed that any attempt to increase the powers of the Governor and to reduce those of the elected representatives would not be acceptable to the people of Anguilla. Nothing more was heard of the proposals. Although the British Government has never formally withdrawn the Rifkin letter, it is generally understood that they realize that any attempt to implement its provisions will be viewed as retrogressive and unacceptable to a self-governing people and will bring with it widespread disorder and disharmony. In any event, a change in the administration in London brought new initiatives.
58. **Partnership for Progress.** The Conservative government in the UK fell in May 1997. The new Labour administration in London set about making new proposals for the relationship with the Overseas Territories. In March 1999, the

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<sup>65</sup> Its members were Attorney-General Richard Whitehead, Speaker Atlin Harrigan, Clement Daniels, Rev Leonard Carty, and Miriam Gumbs.

<sup>66</sup> Anguilla: Report of the Constitutional Review Committee, Produced April 6<sup>th</sup> 1988.

<sup>67</sup> Statutory Instrument 1990/587.

<sup>68</sup> See the essay by Bernice V Lake QC, An Appraisal of the Proposed Constitutional Re-arrangement Contained in the Letter from the Secretary of State Dated 17<sup>th</sup> December 1996.

<sup>69</sup> Sections 28 and 47 of the Constitution.



British Government published a major policy document that set out the parameters of the relationship<sup>70</sup>. The Secretary of State reiterated the four principles that underlie the partnership as:

- (a) *First, our partnership must be founded on self-determination. Our Overseas Territories are British for as long as they wish to remain British. Britain has willingly granted independence where it has been requested; and we will continue to do so where this is an option. It says a lot about the strength of our partnership that all the Overseas Territories want the constitutional link to continue. And Britain remains committed to those territories which choose to retain the British connection.*
- (b) *Second, the partnership creates responsibilities on both sides. Britain is pledged to defend the Overseas Territories, to encourage their sustainable development and to look after their interests internationally. In return, Britain has the right to expect the highest standards of probity, law and order, good government and observance of Britain's international commitments.*
- (c) *Third, the people of the Overseas Territories must exercise the greatest possible control over their own lives. We are proud that our Overseas Territories are beacons of democracy. We applaud their achievements, and want them to have the autonomy they need to continue to flourish.*
- (d) *Fourth, Britain will continue to provide help to the Overseas Territories that need it. It is a source of much pride that the effectiveness of their governments' policies has meant that budgetary help is necessary only for Montserrat and St Helena – both for special circumstances.*

59. One of the principal outcomes of the Report was the replacement of BDT citizenship with full British citizenship. The Dependent Territories were renamed Overseas Territories. The Report makes it clear<sup>71</sup> that Britain's links to the Territories should be based on a partnership, with obligations and responsibilities on both sides. And it continues:

*The territories should administer themselves in accordance with their constitutions and in full respect for those of the UK's international obligations relevant to them. Within that framework the UK should uphold the right of the individual territories to determine their own future and to enjoy a high degree of autonomy, while assuring their defence and external relations and providing governance of high quality.*

60. Chapter 2 of the Partnership for Progress Report sets out the rationale for constitutional review at this time:

*The governance of the territories must have a firm basis. Democracy, human rights and the rule of law are all as relevant in the Overseas Territories as elsewhere. The principles which should underlie modern constitutions are clear. There must be a balance of obligations and*

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<sup>70</sup> Partnership for Progress and Prosperity: Britain and the Overseas Territories, Cm 4264.

<sup>71</sup> Partnership for Progress, op cit, para 1.9.

*expectations, and both should be clearly and explicitly set out. Future action will focus on:*

*Measures promoting more open, transparent and accountable government;*

*Improvements to the composition of legislatures and their operation;*

*Improving the effectiveness, efficiency, accountability and impartiality of the public service;*

*The role of Overseas Territories Ministers and the Executive Councils and their exercise of collective responsibility for government policy and decisions;*

*Respect for the rule of law*

*The promotion of representative and participative government;*

*Freedom of speech and information;*

*The provision of high standards of justice;*

*Adoption of modern standards of respect for human rights.*

61. In March of 2000, there were general elections in Anguilla. The party that came to power was the United Front<sup>72</sup>. In its manifesto it had made a number of promises that involved constitutional reform. These included abolishing the nominated members, increasing the number of ministers, reviewing the provisions for the exercise of responsible government and ministerial authority by elected members, reviewing the policy and law relating to “belongership”, developing codes of conduct for politicians, ministers and members of the Assembly, creating the office of Ombudsman, etc. All these matters involved some sort of constitutional review.

62. **Strategic Country Programme.** The impulse to constitutional review was boosted by the discussions between the British and Anguillian Governments during 2000 leading up to the Strategic Country Programme. The Programme reinforced the commitment by both governments to constitutional reform.

63. **Constitutional and Electoral Reform Committee.** Consequently, Mr David Carty was appointed by the



<sup>72</sup> Led by Osborne Fleming as Chief Minister, with Victor Banks as Minister of Tourism and Finance etc, Evans MacNeil Rogers as Minister of Education etc, and Kenneth Harrigan as Minister of Infrastructure etc. They were joined by opposition member Albert Hughes who was appointed Parliamentary Secretary. Hubert Hughes and Eddison Baird formed the opposition.

Chief Minister, Osborne Fleming, with the task in the first instance of raising the consciousness of the Anguillian public about constitutional matters<sup>73</sup>. Mr Carty solicited and recruited the assistance of a distinguished cadre of Anguillian professionals and opinion makers to assist in the awareness raising effort<sup>74</sup>. They constituted the membership of the Committee.

64. **Consultative Forum.** By October 2001 the Committee had agreed to establish a Consultative Forum. The forum focused its deliberations by dealing with individual chapters of the Constitution on a month-by-month basis. The sessions were open to the public for an interactive discussion with all delegates of the forum who asked questions, made comments and rendered opinions. In addition to the general public, individuals and groups throughout Anguilla were requested to attend in person or through delegates. Presentations were delivered in public at the Teachers Resource Centre and were broadcast live on Radio Anguilla. They were also videotaped and broadcast on Cable Television. Each month a member of the Committee gave a well researched presentation on a particular chapter of the Constitution.
65. **Town Hall Meetings.** The Committee attempted to take the discussion to a wider public by holding Town Hall Meetings out in the districts. Between June and October 2003 some one dozen public meetings were held. These meetings were similarly not well attended. The most popular issues to emerge were (1) electoral reform, (2) believer status, (3) where does real authority in government lie, and (4) voter eligibility.
66. **Telephone Survey.** In November 2003 the Statistics Department conducted a telephone survey on various constitutional issues. Their report was published in January 2004<sup>75</sup>. It is evident from reading the survey that Anguillians are willing to express opinions on constitutional issues. But their interest was not reflected in their attendance at public meetings.
67. **Report of the Committee.** The work of the Committee appears to have fizzled out. There does not seem to have been an official or clear decision to bring its work to an end. It simply stopped meeting. Some have reported to the members of this Commission that this was due to lack of interest. Others have reported that it was as a result of a Committee of Twenty-Four meeting which criticized the British Government for the way it was handling the whole issue of constitutional reform in the Overseas Territories. Whatever the reason, the Committee never finished its work and made no recommendations for constitutional reform. Its Chairman in May 2005 published a record of the various speeches and transcripts of meetings together with an Overview written by him in which he recommended the setting up of a new Commission with clear terms of reference and with timelines for completion<sup>76</sup>. The Chairman has been heavily criticized in

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<sup>73</sup> This account is taken from the Overview section of the Report of the Constitutional and Electoral Reform Committee, 1 May 2005.

<sup>74</sup> They included Dame Bernice Lake QC, Colville Petty OBE, Franklin Connor OBE, Dr Phyllis Fleming-Banks, Timothy Hodge, Alex Richardson, Davon Carty, Stanley Reid, and Louise Hazell as Executive Secretary.

<sup>75</sup> A copy of it was published in the 2005 Report, p. 168.

<sup>76</sup> Report of the Constitutional and Electoral Reform Committee, op cit.

the media by members of his Committee who claimed that they had never been shown the Report in advance and had not agreed to it. Some members of the Committee subsequently went on radio and other public fora urging the public to boycott the work of the Commission. They themselves refused to play any further part in the exercise or constitutional review and reform.

68. **Separation Day Speech 2005.** On 19 December 2005 the Governor made a speech in which he announced that the Government had decided to start up a new Constitutional and Electoral Reform Commission to start work in early 2006. He explained that he was then consulting with members of the Opposition and representatives of non-governmental organisations about the membership of the Commission. He explained that the new Commission would build on the work of the previous Committee and seek to establish the broadest possible agreement on those areas which might be reformed. The result was the appointment of this Commission.



Governor's Official Flag

## METHODOLOGY

- 1. Appointment of the Commission.** The Commission was established by His Excellency the Governor on 21 January 2006. The Governor by his letter of appointment to the Commissioners established the Commission's terms of reference, a copy of which is attached as **Appendix 1**. The members of the Commission consisted of Don Mitchell CBE QC as Chairman, Rev Cecil Weekes, Stanley Reid as Secretary until 31 May when he was appointed Deputy Governor and resigned from the Commission, Chanelle Petty-Barrett who succeeded him as Secretary, Grace Carty, Calvert Carty, and Claudel Romney. Ms Maria Reid of the Treasury Department was appointed Executive Secretary.



His Excellency Mr. Alan Huckle

- 2. Press Conference.** On 30 January 2006 members of the Commission were introduced to the press at a conference at the Governor's Office. His Excellency the Governor Mr Alan Huckle made opening remarks in which he explained the procedure he had followed in setting up the Commission and what he hoped the outcome to be. The Chairman delivered a speech in which he set out his vision of how he hoped the Commission would proceed and of his plans to ensure the Commission accomplished its mandate.
- 3. Commission Meetings.** The Commission met for the first time on 7 February and weekly thereafter mainly on Tuesdays at the Speaker's Conference room, access to which was by kind permission of the Hon Speaker of the House of Assembly. The Commission kept minutes of all meetings and these were regularly circulated to all members. Extensive use was made of email by the Commission for communication.
- 4. Plan of Action.** The Members of the Commission developed written a Plan of Action. This plan went through a number of changes as it evolved to meet the needs of the day.
- 5. Budget.** The Commission developed its own budget, which it submitted to the Hon Chief Minister for funding. The Commission was pleased that Executive Council approved the proposed budget in full, without any cut.



Hon. Osbourne Fleming

6. **Draft Recommendations.** As recommended in its terms of reference, the Commission proceeded to review all reports and transcripts of speeches and radio and television presentations made on the subject of constitutional reform in Anguilla over the previous 5 years. We also reviewed the Constitutions of other British Overseas Territories and the Reports prepared by their Constitutional Reform Commissions. Members of the Commission divided up the areas of the Constitution between ourselves for convenience. We prepared draft proposals for constitutional reform based on this earlier work. These draft proposals were published by the Commission and circulated widely. We handed out copies at all public and meetings and meetings with NGOs and other groups. We posted them in full on the Commission's website. The papers and the issues raised in them were the subject of discussion on the website and at all public and other meetings. The drafts went through a number of evolutions as comments came in. They formed the basis of the recommendations made in this Report. We have considered each significant public reaction to our recommendations and have given our explanation as to why we do not agree with any particular suggestion coming from a member of the public where necessary. Many of the reactions of the public have been incorporated into the Report.
  
7. **Consultation with the Public.** As an essential part of its terms of reference, members of the Commission went into the community and consulted with citizens and residents as to their thoughts on constitutional reform. These initiatives took the form of:
  - (a) public meetings to which the Chairpersons of the BVI, Montserrat, Turks & Caicos and Cayman Constitutional Commissions were invited to discuss the process they had followed in their islands. The Commission was grateful that the invitation was taken up by Mr Gerard St C Farara QC of Tortola, Dr Sir Howard Fergus of Montserrat, Dr Carlyle Corbin of the University of the Virgin Islands, and Hon Benson Ebanks OBE JP from Cayman Islands. Only the Turks & Caicos Chairman and Dr Hunt of the Committee of 24 were unable to take up our invitation;
  
  - (b) after the Commission had developed initial draft recommendations for discussion, a series of public meetings were held at primary schools and churches in all the seven districts of the island;
  
  - (c) meetings with any NGO or group that would schedule a meeting with the Commission to discuss the draft discussion papers and any other constitutional issue;
  
  - (d) radio talks and call-in programmes at all of which the draft discussion papers and any other constitutional issues were described and discussed;
  
  - (e) hosting of a "Google Groups" website where any member of the public could post a comment on any of the activities of the Commission: <http://groups.google.com/group/Anguilla-Constitutional-Reform>;

- (f) distributing approximately 1,500 copies of the present Constitution free of charge to the public. The Anguillian Newspaper distributed approximately 900 of these as an insert in one of its weekly publications;
- (g) distributing at all public and other meetings the latest copies of any draft recommendations prepared by members of the Commission as discussion papers;
- (h) after the Commission had arrived at an agreed draft Report and recommendations, the Commission held a final series of public meetings throughout the island at which the final agreed recommendations were circulated and explained.

A full list of the above initiatives and activities includes:

**Commission Meetings:**

Commission Meeting	30 January
Commission Meeting	7 February
Commission Meeting	14 February
Commission Meeting	21 February
Commission Meeting	28 February
Commission Meeting	2 March
Commission Meeting	7 March
Commission Meeting	14 March
Commission Meeting	21 March
Commission Meeting	28 March
Commission Meeting	4 April
Commission Meeting	11 April
Commission Meeting	25 April
Commission Meeting	2 May
Commission Meeting	9 May
Commission Meeting	16 May
Commission Meeting	23 May
Commission Meeting	31 May
Commission Meeting	6 June
Commission Meeting	13 June
Commission Meeting	17 June
Commission Meeting	20 June
Commission Meeting	22 June
Commission Meeting	27 June
Commission Meeting	29 June
Commission Meeting	4 July
Commission Meeting	6 July
Commission Meeting	11 July
Commission Meeting	13 July
Commission Meeting	18 July
Commission Meeting	20 July
Commission Meeting	25 July
Commission Meeting	1 August
Commission Meeting	15 August

Commission Meeting 22 August

**Public Meetings:**

First Guest Meeting at the Teachers' Resource Center	4 March
Second Guest Meeting at the Teachers' Resource Center	18 March
Island Harbour Anglican Church Hall	8 April
Island Harbour Anglican Church Hall	20 April
Morris Vanterpool Primary School	22 April
Morris Vanterpool Primary School	26 April
Allwyn Allison Primary School	3 May
Allwyn Allison Primary School	10 May
Blowing Point Primary School	11 May
Blowing Point Primary School	15 May
Stoney Ground Public Meeting	22 May
Valley Primary School	25 May
Sandy Ground Methodist Church	26 May
Walter G Hodge Memorial Lecture by Chairman	6 June
Sandy Ground Methodist Church	9 June
Road Primary School	14 August
Morris Vanterpool Primary School	15 August
Island Harbour Anglican Church Hall	16 August
Allwyn Allison Primary School	17 August
Sandy Ground Methodist Church	18 August
Stoney Ground Primary School	21 August
Ruthwill Auditorium	22 August

**Meetings with NGOs, groups and individuals:**

Supervisor of Elections, Mr Colville Petty OBE	30 March
Christian Council	10 April
Governor and Deputy Governor	18 April
ALH Comprehensive School Debating Society	25 April
Ministers of Government and advisers	26 April
Christian Council	27 April
ALHCS, Debating Society	27 April
Immigration Department	3 May
ALHCS, 3 <sup>rd</sup> Form	3 May
ALHCS, 3 <sup>rd</sup> Form	3 May
ALHCS, 3 <sup>rd</sup> Form	4 May
Parliamentary Opposition and politicians	4 May
APANY, New York	7 May
ACSA Executive Committee	8 May
Parliamentary Opposition and politicians	11 May
Parliamentary Opposition and politicians	19 May
Governor and Deputy Governor	24 May
Tourist Board	24 May
Attorney-General	29 May
Ministers of Government and advisers	31 May
Hon Hubert Hughes, Opposition Member	1 June
Community Foundation Board	6 June



Anguilla Civil Service Association general membership	8 June
Anguilla FPA Executive Committee	8 June
Anguilla Beautification Club General Meeting	14 June
National Council of Women General Meeting	23 June
Director of the Financial Services Commission	28 June
Speaker of the House of Assembly	12 July
Anguillians Resident in St Thomas, USVI	16 July
Presentation in St Maarten	24 July

### **Use of Public Media**

Anguillian Newspaper - Article on Appointment of the Commission	3 February
The Anguillian Newspaper – Editorial on the Appointment	3 February
Press release on 1 <sup>st</sup> Public Meeting	1 March
Kool FM – To the Point (call-in programme)	6 March
The Anguillian Newspaper – Article on First Public Meeting	9 March
Press release on 2 <sup>nd</sup> Public Meeting	11 March
Kool FM – To the Point (call-in programme)	20 March
Press release on TV programmes	24 March
The Anguillian Newspaper - Front page article	24 March
Kool FM – Talk Your Mind (call-in programme)	29 March
Kool FM – To the Point	3 April
Press Release of Scheduled District Meetings	4 April
The Anguillian Newspaper - Insert of Constitution	7 April
Radio jingle – for all related announcements	1 May
Press release – New York consultations	2 May
Radio Anguilla, Inside the Constitution	2 May
Radio Anguilla, Inside the Constitution	9 May
Radio Anguilla, Inside the Constitution	16 May
Daily Herald – Weekender (full page article)	20 May
Kool FM – “To the Point” broadcast of public meeting	22 May
Radio Anguilla, Inside the Constitution	23 May
Kool FM – To the Point (call-in programme)	29 May
Radio Anguilla, Inside the Constitution	6 June
Radio Anguilla, Inside the Constitution	13 June
Radio Anguilla, Inside the Constitution	20 June
Radio Anguilla, Inside the Constitution	27 June
Radio Anguilla, Inside the Constitution	4 July
Kool FM – “To the Point”	31 July
Radio Anguilla, Inside the Constitution	1 August
Press Release of Scheduled District Meetings	4 August
Radio advertising of details of public meetings	as needed
Loudspeaker announcements – advertising public meetings	as needed
GoogleGroups website – discussion forum	continuous
Newspapers – interviews and articles	various
TV rebroadcast of earlier Committee programmes	various
TV broadcast of public meetings with guest speakers	various
Email – Every public servant on every public meeting	various

8. **Public Attitude Generally.** Anguillians are by and large satisfied that the 1982 Constitution gives them what they want: a large degree of autonomy, with external forces at hand (in the form of a British warship) for the defence of the

island, and its representation overseas by the Foreign and Commonwealth Office. The utility of a British passport to facilitate international travel, study, and work is generally appreciated. Only occasionally does the call for constitutional change come, and then usually from Britain. Interest in discussing reform is limited to politicians, lawyers, and a few others who take a special interest in these matters. Individuals and groups have strong views on a limited number of issues: Belonger Status, allegations of corruption in government, the small size of the Assembly, proportional representation, members at large, the powers of the Governor, Britain's obligations to educate the public to the options open to an Overseas Territory, etc.

9. **Independence.** There is one very small group that agitates from time to time for independence to become an issue. Other than a largely dormant website<sup>1</sup>, nothing surfaces except occasionally, usually at the time of general elections or other time of political agitation. The vast majority of Anguillians have made it clear both during the process adopted by the previous Committee and in representations to this Commission that they do not wish to consider the issue of independence. Anguillians are in general consensus that their institutions of democracy are new-born and fragile. The 13 Northern Colonies by contrast declared independence in 1776 after 150 years of self-government by both an Assembly and a Council in each of the Colonies. Anguilla, by contrast, has had a bare 40 years of internal self-rule by a Council and an Assembly. Time is still needed for the necessary conventions and practices to form and to firm up so that the bare bones of the Constitution can come to life and the people can feel the necessary confidence in their democratic and political institutions to venture out onto the rough and unknown seas of independence under the care of captains not yet on the horizon.
10. It was a matter of regret to the Commission that every effort to meet with the Bar Association or its executive was unsuccessful. Written letters and emailed requests sent to the officers of the Association requesting a meeting did not produce any response. The members of the legal profession in Anguilla would doubtless have made a useful and positive contribution to the work of the Commission.
11. The Commission agreed early in its deliberations that it would make every effort to meet the six-month target given to us. For planning purposes we set an initial deadline of four months to review all the issues, prepared discussion papers, seek the reaction of the public, and make a final report. In the event, it became necessary to use up the full period of time given to us. We are pleased that we have been able to agree our Report which we now deliver to Government.
12. In conclusion, the members of the Commission wish to thank His Excellency, the Ministers of Government and the Opposition who recommended our appointment. We were pleased to have been of service. We hope that the work done will not prove to have been in vain, and that real and meaningful constitutional advance will come out of this Report.

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<sup>1</sup> <http://www.freeanguilla.com/forum/index.php>

## THE COMMISSION'S RECOMMENDATIONS

### THE ORDER

1. The Order is the legal instrument signed by or on behalf of the Queen in Council. The Constitution is the contract approved by the people of Anguilla and which sets out the terms on which they agree to be governed by the Executive. The present Constitution of Anguilla is a Schedule to an Order of 1982<sup>1</sup>.
2. The 1982 Order is very unsatisfactory. It is to be hoped that the faults that appear in it will not be repeated. For example, it contains certain provisions that must be read in conjunction with the Constitution before the terms of the Constitution can be understood<sup>2</sup>. The two documents have to be read side by side for certain provisions to be understood. This is perfectly sensible for a lawyer. It is not so for a layman. The Order contains provisions that do not even make sense<sup>3</sup>.
3. The Commission **recommends** that there should be no provision in the new Order placing a gloss or interpretation on any part of the Constitution: the Constitution should be self-contained, whole and entire.



<sup>1</sup> The Anguilla Constitution Order 1982, Statutory Instrument 1982 No 334.

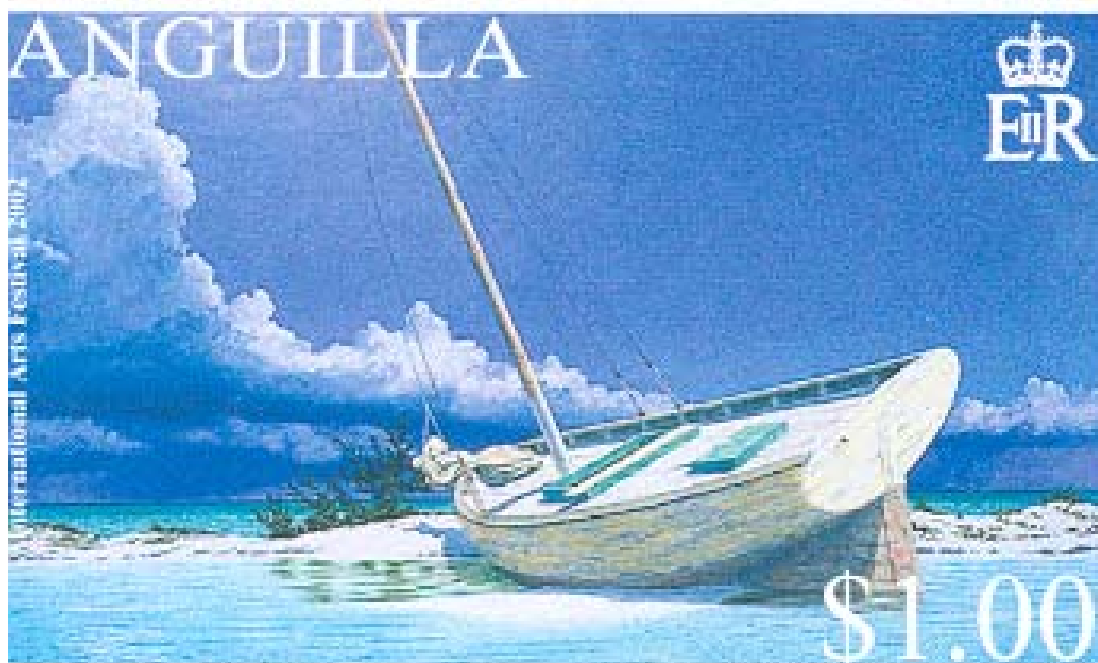
<sup>2</sup> Section 3 of the Order dealing with **Administration of Justice** places a gloss on section 15(1)(c) of the Constitution, and would be more useful if it were located in the Constitution itself. Section 4 of the Order dealing with **Citizenship** places a gloss on section 80(2) of the Constitution, and should be relocated to that section or to a definition section in the Constitution itself. Section 7 of the Order deals with **Inhuman Treatment** and belongs in section 6 of the Constitution.

<sup>3</sup> Section 3 of the Order, for example, empowers the Chief Justice to appoint to a tribunal persons who have previously served on either the **Supreme Court of the Windward and Leeward Islands** or the **British Caribbean Court of Appeal**. These courts have not existed for some 40 years and we can reasonably assume that all the judges of this court had been long dead when the Constitution was adopted in 1982. Any judges of its successor court, the **West Indies Associated States Supreme Court**, who retired as judges of that court, will have passed away by this time.



## THE PREAMBLE

4. The Preamble should set out something about who the people of Anguilla are, and what they expect of both their Government and of the British Government. Such a Preamble is an essential part of a modern Constitution. The Constitution of Anguilla presently lacks a Preamble. The Commission **recommends** that there should be a Preamble to the Constitution.
5. Two persons have submitted draft Preambles. Neither one has been agreed by the Commission as suitable, principally due to the lack of public comment. The Commission **recommends** that there be a public competition to settle on an acceptable wording.





## CHAPTER 1: PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS

6. **Advanced Provision.** Unlike the British Virgin Islands and the Cayman Islands, Anguilla enjoys an advanced provision for the protection of fundamental rights and freedoms in Chapter 1 of the present Constitution. The issue of such a provision is therefore not as urgent as it is in those territories.
7. **Henry Steel's Model.** The Commission has considered the Model<sup>4</sup> prepared by Mr Henry Steel for the Overseas Territories. Mr Steel also supplied Explanatory Notes. The Commission also considered the recommendations of the Montserrat<sup>5</sup>, BVI<sup>6</sup>, and Cayman<sup>7</sup> Commissioners; the suggestions coming out of the town hall meetings held by the Constitutional Reform Committee during the period 2001-2003; and the various suggestions and comments made at public meetings, on radio and television, and in meetings with various NGOs, and on the Commission's website during the period of the work of the Commission<sup>8</sup>.
8. **Present Chapter Preferred.** The Commission concluded that the Model was not suitable for adoption in Anguilla for a number of reasons. First, the present Anguilla Constitution already has an advanced Chapter dealing with Fundamental Rights. The Commission sees no reason to confuse citizens by recommending the adoption of an entirely new set of Fundamental Rights. Second, in the aftermath of the United Kingdom's imposition of a law repealing offences relating to homosexual acts among men, there are in the Anguillian community doubts about the *bona fides* of those recommending the adoption of an entirely new Chapter: there are serious concerns that the urge to review the Human Rights aspects of the Constitution is prompted by a European desire to impose foreign and unacceptable social norms. The Model attempts to introduce "rights" that are objectionable to a majority of Anguillians. Examples are sections 10 [*Protection of the Right to Marry*]; and 12 [*Protection of the Right to Education*]. The *Right to Marry* appears to be worded in language intended to introduce a right for members of the same sex to marry each other, a notion which is objectionable to a majority. The *Right to Education* as proposed would impose an obligation to provide free primary education for the children of all persons living in Anguilla. That is a right that a majority would want to see extended only to Anguillians. Anguilla cannot afford to provide free education to the children of all the temporary

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<sup>4</sup> Draft Model Chapter on Fundamental Rights, 15 May 2001.

<sup>5</sup> Montserrat: Report of the Constitutional Commissioners 2002.

<sup>6</sup> The Virgin Islands: Report of the Constitutional Commission 2005. Presented to Executive Council on 15 April 2005.

<sup>7</sup> Report of the Constitutional Modernisation Review Commissioners 2002.

<sup>8</sup> For a list of the Commission's consultations, see page 25.

residents of Anguilla. Third, there have been pleas made that both the present Constitution and the Model Draft<sup>9</sup> are written in dense and incomprehensible language not able to be understood by the man in the street. In this respect, the Model will do nothing to improve public appreciation and knowledge of the fundamental rights enjoyed by Anguillians: it is written in even denser and more incomprehensible language than the present Chapter 1. In the circumstances, the Commission **recommends** the rejection of the proposed draft Model Chapter on Fundamental Rights. All that is required is the amendment of a few of the sections of the present Chapter 1 to make them more reflective of modern norms and expectations.

9. **Chapters II to VII.** Similarly, the remainder of the Constitution, Chapters II to VII, does not need fundamental change, or replacement by a completely new form. The Commission will recommend that Chapters II to VII of the Constitution remain, but with the various amendments indicated. We now look at the various sections of the Constitution one by one.

**Section 1: Fundamental Rights and Freedoms of the Individual.**

10. This section commences the Chapter. Strictly, its contents belong, if anywhere, in a Preamble. The Commission **recommends** that the section not be reproduced in the revised Chapter I.

**Section 2: Protection of Right to Life.**

11. Section 2(1) as presently worded<sup>10</sup> is out of date. Its wording precedes the abolition of the death penalty for murder in Anguilla. To the extent that the death penalty still exists for such offences as treason or intentionally burning one of Her Majesty's ships, it is archaic and should be abolished. During the review process the Commission received no representation that the penalty should be retained. The Commission **recommends** that the section should be amended to delete the reference to the death penalty.

**Section 3: Protection of Right to Personal Liberty.**

12. **To Be Told of Your Rights.** The present section is defective in that it does not provide that a person who is arrested is entitled to be told of his rights. It has been left to the courts to interpret this common-law entitlement. The Commission is satisfied that modern practice and a proper understanding of the practical application of this right requires that a person arrested is entitled immediately upon his arrest, and not after he

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<sup>9</sup> The Draft Model perpetuates the incorporation of an interpretation section at its very conclusion, thus continuing to ensure that the substantive provisions cannot be understood until the Chapter has been read in its entirety. The definitions belong in the section where the terms are used, not in an appended final section.

<sup>10</sup> (1) No person shall be deprived of his life intentionally save in execution of the sentence of a court in respect of a criminal offence under the law of Anguilla of which he has been convicted.



has been brought to a police station, to be told of his rights<sup>11</sup>. The Commission **recommends** that should be a new sub-section setting out this right in the clearest language.

13. **To Be Brought Before a Court.** The present section 3(3) provides that a person arrested shall be brought before a court “without delay.” This phrase is ambiguous and has caused much distress in the past. It is not the wording found in more advanced Commonwealth Caribbean Constitutions<sup>12</sup>. “Without delay” should be replaced by “within forty eight hours” and the Commission so **recommends**.

**Section 4: Protection from Slavery and Forced Labour.**

14. During the review process no comment was received from the public and in our view the section does not require amendment.

**Section 5: Protection of Freedom of Movement.**

15. Section 5 guarantees the right of freedom of movement throughout, and the right to enter and to leave, Anguilla and of immunity from expulsion. Sub-section (3)(c) permits the House of Assembly to pass a law allowing for the arbitrary expulsion from Anguilla of any non-Anguillian who is otherwise lawfully present on the island. The relevant law at present is the **Undesirable Persons Expulsion Act**<sup>13</sup>. It permits the authorities to deport a non-belonger from the island without any judicial process of any kind. A number of persons have made representations to the Commission that the way in which non-belongers are sometimes expelled is arbitrary and unjust. The Commission considers that the power to expel undesirable persons is essential for the protection of the wider society. If the power is exercised in an arbitrary and unjust way, the courts are available to provide the necessary remedy. The Commission does not recommend any alteration to the constitutional provision.

**Section 6: Protection from Inhuman Treatment.**

16. During the review process no comment was received from the public and in our view the section does not require amendment.

**Section 7: Protection from Deprivation of Property.**

17. The section is in the time-honoured language of such sections. The only improvement that might be made to it is to alter sub-section (1)(c) to provide that the compensation is required to be paid in cash. The Commission so **recommends**.

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<sup>11</sup> The Model Chapter 1 would have provided that the person arrested be informed of his right to legal representation immediately upon his being brought to a police station.

<sup>12</sup> In the Constitution of Antigua and Barbuda, for example, the time is limited to 48 hours.

<sup>13</sup> Chapter U5 of the Revised Statutes of Anguilla.

- Section 8: Protection from Arbitrary Search or Entry.**
18. During the review process no comment was received from the public and in our view the section does not require amendment.
- Section 9: Provisions to Secure Protection of Law.**
19. Section 9(4)(a) permits a court blanket powers to exclude persons other than the parties to litigation from interlocutory civil proceedings, ie, Chamber hearings. It has been suggested to the Commission that many important issues of public interest are concluded in Chambers. The public should have a right to be present, particularly through the press, at such hearings unless there are other special circumstances that make it desirable for the hearing to be heard *in camera*. Section 9(4)(c) permits a court to exclude members of the public from any proceeding where the court considers that publicity would prejudice the interests of justice, or in the interests of defence, public safety, public order, public morality, or the welfare of children. The Commission considers this provision more than adequate to permit the court in suitable Chambers hearings to exclude members of the public, including the press. The Commission **recommends** the deletion of sub-section (4)(a).
- Section 10: Protection of Freedom of Conscience.**
20. During the review process no comment was received from the public and in our view the section does not require amendment.
- Section 11: Protection of Freedom of Expression.**
21. During the review process no comment was received from the public and in our view the section does not require amendment.
- Section 12: Protection of Freedom of Assembly and Association.**
22. During the review process no comment was received from the public and in our view the section does not require amendment.
- Section 13: Protection from Discrimination on the Grounds of Race, etc.**
23. During the review process there was much discussion on Mr Henry Steel's draft Model Chapter 1. In particular, there was a wide consensus that under no circumstances would the people of Anguilla accept any proposal to prevent discrimination on the grounds of sexual orientation. As a result, the section does not require amendment.
- Section 14. Derogations from Fundamental Rights and Freedoms under Emergency Laws.**
24. During the review process no comment was received from the public and in our view the section does not require amendment.

25. **Section 15: Protection of Persons Detained under Emergency Laws.** During the review process no comment was received from the public and in our view the section does not require amendment.
26. **Section 16: Enforcement of Protective Provisions.** Section 16(1) provides that anyone who alleges that the Constitution has been, or is being contravened in relation to him may apply to the High Court for redress. In more modern Caribbean constitutions the phrase “or is likely to be” is also to be found. The Commission **recommends** that the phrase “or is likely to be” be inserted after the phrase “or is being”.
27. **Other Means of Redress.** Section 16(2) contains a proviso that the High Court may decline to exercise its powers if other means of redress existed. It has been argued by many persons that this proviso unnecessarily derogates from the right of a citizen to seek the enhanced protection of the court by way of an administrative or constitutional action. The Commission **recommends** that the proviso to sub-section (2) should be deleted.
28. **Section 17: Declaration of Emergency.** Section 17(1) provides that the Governor declares a state of emergency. Section 28(1) suggests that he shall do so “in consultation with” Cabinet and act “in accordance with” their advice. These two phrases “in consultation with” and “in accordance with” are contradictory. For the avoidance of any doubt, the Commission **recommends** that sub-section (1) expressly states “in consultation with Cabinet and acting on its advice”.
29. **Section 18. Interpretation and Savings.** This section does not belong at the end of this Chapter. It should either be placed at the beginning of the Chapter or, where convenient, its provisions should be placed in the relevant section of the Constitution and the Commission so **recommends**.



## CHAPTER 2: THE GOVERNOR

### Section 19: The Governor.

30. Representations have been made to the Commission that the Chief Minister and the Leader of the Opposition should have the right to be consulted prior to the appointment of a Governor or Deputy Governor. The Commission considers this to be an essential means of facilitating good government and in keeping with the promise of partnership. The Commission **recommends** that the Constitution be amended to provide that the Chief Minister and the Leader of the Opposition will be consulted prior to the appointment of a Governor or Deputy Governor.

### Section 19A: The Deputy Governor.

31. The British government has indicated its intention in future to ensure that this office is filled by persons who are Anguillian. The Anguilla public has welcomed this development. It is appropriate that this declared intent should not be left to chance implementation, but that it should be entrenched in the Constitution. This section should be amended to add a sub-section to that effect, and the Commission so **recommends**.

### Section 20: Acting Governor.

32. This section provides for the appointment of an Acting Governor in the absence of the Governor. During the review process no comments were received from the public and in our view does not require any amendment.

### Section 21: Governor's Deputy.

33. This section provides for the Governor to appoint a deputy in the absence of the Deputy Governor to act for him when he is ill or absent from the island. During the review process no comments were received from the public and in our view the section does not require any amendment.



## CHAPTER 3: THE EXECUTIVE

### Section 22: Executive Authority for Anguilla.

34. This section provides that executive authority is vested in Her Majesty. During the review process no comments were received from the public and in our view the section does not require any amendment.

### Section 23: Executive Council.

35. This section establishes the Executive Council. There is general consensus that the term “Executive Council” is outmoded. The preferred term is “Cabinet”. The Commission **recommends** that the Constitution be amended to use the term Cabinet in place of Executive Council. In this Report, wherever it is necessary to refer to the Executive Council “Cabinet” will be used.
36. **Name of Chief Minister.** Further, there is general agreement that the leader of government, or “Chief Minister”, should in future be referred to as the “Premier” and the Commission so **recommends**. Whenever it is necessary to refer to the Chief Minister hereafter in this Report, the alternative term “Premier” will be used.
37. **Number of Ministers.** This section of the Constitution presently provides that there should be no more than 3 Ministers besides the Premier. Of the present 7 elected members of the Assembly, 4 are members of Cabinet. In addition, one of the other members of the Assembly is appointed as Parliamentary Secretary with Ministerial responsibilities. In representations made to the Commission, there was consensus that there are too few Ministers to perform the functions of government efficiently. The maximum number of Ministers needs to be increased. Most persons have urged that the number be increased to at least 5 besides the Premier. A few have argued that there needs to be at least 6 besides the Premier. The Commission has recommended that the size of the Assembly be increased from the present 7 elected persons to a total of 13 elected persons. There is general consensus that the number of Ministers must not exceed fifty percent of the Assembly. The Commission **recommends** that the maximum number of Ministers besides the Premier be increased from 3 to 5, which, in an Assembly of 13, will leave 7 elected representatives who are non-Ministers. In the event that the number of Ministers is to be increased to 7 besides the Premier, the Assembly should consist of at least 15 elected members to ensure a proper balance.
38. **Ex-officio Members.** The Constitution provides that there shall be two ex-officio members of Cabinet, the Deputy Governor and the Attorney-General. There have been recommendations made to the Commission to exclude these officers from Cabinet as they are not elected and it is anti-democratic for them to continue to sit and vote in Cabinet. However, the

Commission is persuaded by the arguments of Ministers that they value the advice of these officers at Cabinet meetings and that they should remain, especially as they do not normally vote at Cabinet meetings. The Commission **recommends** that they stay as ex-officio members of Cabinet, but without vote, and that the Constitution should say so.

Section 24: Appointment of Ministers.

39. This section and section 25 when read together provide that the Governor appoints as Premier the person who commands the support of a majority of the elected members of the Assembly. There is no limitation to this power.
40. **Governor's Discretion to Appoint the Premier.** Some persons have represented that at no time subsequent to the immediate aftermath of a general election should the Governor have any discretion to appoint a new Premier; that, whatever the Constitution presently says, it should in future be made clear that if the Premier dies or otherwise vacates his office the Governor shall be obliged to call general elections. The argument is based on a call for increased democracy and an assumption that it is the people who elect the Premier and his government and that, when they fall, for whatever reason, it is only the people who should have any say in who the new Premier and his government is to be. The consequences of such a constitutional provision will be far-reaching, eg, the Premier would be deprived of his present discretion to resign early and to permit his chosen successor to serve in office for the remaining period of the existing term. Also, if the Premier were to die a short while after a general election, the people would have to be put through the trauma of general elections even though the majority of the elected Members of the Assembly have a leader they are prepared to support. The Commission is not satisfied that so radical a change in the present constitutional arrangements is desirable and does not recommend this proposed change.
41. **Vacation of Office of Premier.** Some persons making representations to the Commission appear to be confused as to whether this power of appointment applies when the Premier resigns or dies in office. They have suggested that there is an ambiguity and that the Constitution is silent on the point. They have even suggested that a proper interpretation of sections 24 and 25 when read together is that they require that the Governor call a general election whenever the Premier dies or otherwise vacates his office. The sections do not say that they apply only after a general election. Nor is this a reasonable interpretation of the sections. Although the Commission does not believe that there is any ambiguity in the present provision, for the avoidance of any doubt, the Commission **recommends** that section 24(1) be amended by the addition of words that will ensure that all readers of the Constitution can be in no doubt that the Governor has the discretion whether or not to call a general election on



the death or resignation of the Premier, based on his assessment of whether there is a person in the Assembly who commands majority support, eg, by adding the words, “whether after a general election or at any time thereafter if it shall become necessary,” after the words “acting in his discretion”.

**Section 24A: Appointment of Parliamentary Secretary.**

42. This provision was made at a time when Cabinet was very limited in size and it was thought necessary to share the burden of office of Minister with a fifth elected member. With the increase in size of Cabinet from 4 to 6 as recommended above, the Commission doubts that this provision is necessary, and **recommends** its removal from the Constitution.

**Section 25: Tenure of Office of Members.**

43. Section 25 consists of four sub-sections. It deals with the different circumstances in which the office of Minister is vacated.
44. **Vote of No Confidence.** Section 25(1) provides for the Governor to be obliged to call a general election in the event of a vote of no-confidence succeeding in the House of Assembly. A two-thirds vote is required for such a motion to succeed. This was the only sub-section that stimulated public discussion.
45. **Automatic Return to General Elections.** It has been represented to the Commission that it is essential for Ministers and members of the Assembly to be free to act on their conscience and to join in a vote of no confidence if they consider it proper to do so, and for the Governor, acting in his discretion as the Constitution prior to 1982 previously provided, to have the choice of either calling a general election or appointing some other person commanding the majority support of the Assembly to be the Premier. The contrary view held by some of the persons making representations is that when Cabinet Ministers join in a vote of no confidence in their own government, they betray the Premier who selected them for appointment, and their action should automatically trigger a general election as sub-section (1) presently provides. This principle, it is argued, applies equally to back-benchers who have probably won their seat by the support of their party leader. The convention is that if a no-confidence motion is passed shortly before new general elections are due, the Governor is best advised to call general elections early. If the motion succeeds shortly after a general election, and the majority of the Assembly transfer their support to some other member of the Assembly, the Governor is better advised to avoid the trauma of another general election and to appoint that person as the new Premier. The Commission **recommends** that we return to the pre-1982 constitutional provision giving the Governor the discretion whether to call a general election.

46. **Two-thirds Majority.** A majority of persons making representations to the Commission on the effect of section 25(1) were of the view that if a Government has lost the support of the majority of the Assembly there was no reason why that Government should not fall. That is, a vote of no-confidence should succeed on a vote of a simple majority. A few persons were of the view that stability is better ensured by retaining the present two-thirds majority provision. The Commission **recommends** that the requirement should be amended to a simple majority.

**Section 26: Performance of Functions of Chief Minister in Certain Events.**

47. This section authorises the Governor to appoint any Minister to perform the functions of the Premier in his absence from Anguilla or illness. The Governor is required to make the appointment acting on the advice of the Premier unless it is impracticable. This post can be described as that of Acting Premier.
48. **Deputy Premier.** There is no provision in the section or elsewhere in the Constitution for the post of Deputy Premier. Representations have been made to the Commission that the Constitution should provide for such a post. That would permit the Premier to nominate the person who will normally act for him in his illness or absence. The Commission is of the view that this will add certainty to the Constitution, and the Commission **recommends** that the section be amended to provide for the post of Deputy Premier.

**Section 27: Assignment of Responsibilities to Ministers.**

49. Sub-section (1) of this section provides for the Governor acting in accordance with the advice of the Premier to appoint Ministers. No representations have been made to the Commission for any change to this sub-section.
50. **Power to Call for Official Papers.** Section 27(2) empowers the Governor to call for any official papers available to a Minister, presumably with a view to overseeing the Minister's performance of his duties. While this sub-section (2) provision for gubernatorial oversight of a Minister's performance might have been useful in the early days of Ministerial government in Anguilla, it is to be doubted whether it is properly to be located in a modern British Overseas Territory's Constitution. The Commission **recommends** the removal of sub-section (2).

**Section 28: Governor to Consult Council.**

51. Section 28(1) requires the Governor to consult with and act in accordance with the advice of Cabinet on the formulation of policy and the exercise of all powers conferred on him by law and the Constitution. No representations have been made to the Commission for its alteration. The

Commission considers that it is an appropriate provision and does not require amendment.

52. **Reserved Powers.** Section 28(2) provides that the Governor shall not be obliged to consult with Cabinet nor act on their advice in any matter relating to:

(a) defence, external affairs, international financial services, or any directly related aspect of finance, or internal security, including the police, (except that he should keep Cabinet informed of any financial implications and he should consult with the Premier in matters relating to internal security including the police);

(b) the appointment, termination, dismissal, or retirement of any public officer, or the application of terms or conditions of employment of the public service;

(c) any power conferred on him by the Constitution that he is empowered to exercise in his discretion or in pursuance of Royal Instructions;

(d) any power that any law authorises him either expressly or by necessary implication to exercise without consulting Cabinet;

(e) any matter in which, in his judgment, the service of Her Majesty would sustain material prejudice thereby;

(f) where the matter is too unimportant to require the advice of Cabinet; or

(g) where the urgency of the matter requires him to act before Cabinet can be consulted, (provided that he must inform Cabinet as soon as practicable of the measures which he has adopted and the reasons for those measures).

53. **Governor to Consult on Reserved Matters.** It has been submitted to the Commission that while it may be proper for the Governor not to be required to act on the advice of Cabinet in any of these section 28(2) reserved matters, it is no longer appropriate for Ministers of Government to learn about these matters by reading about them in the newspaper or hearing a press release on the radio as presently happens. The Commission **recommends** that the democratic process be strengthened by requiring the Governor to consult with the Cabinet or the Premier as appropriate on all reserved matters, subject to the provisions made below.

54. **Ouster of Court.** Section 28(3) provides that the question whether the Governor has exercised a function either on the advice of or after consultation with any person shall not be enquired into in any court. The person whom the Governor is normally required to consult is the Premier or his Cabinet. On occasion there is provision for the Governor to act on the advice of a Secretary of State. There has been no representation made to the Commission that any alteration should be made to the provision relating to action on the advice of the Secretary of State. By contrast, no one making representations to the Commission defended the retaining of this clause ousting jurisdiction of the court to enquire whether the Governor had in fact consulted with or acted on the advice of Cabinet or the Premier or other local entity with whom he may be required to consult. It was the unanimous view among the persons making representations on this sub-section that this provision is undemocratic, and should be removed in so far as it relates to local consultation. The Commission **recommends** that the ouster clause should be retained only in relation to consultation with the Secretary of State.
55. **Governor's Responsibility for Administration of Reserved Powers and Public Service.** Sub-sections (4), (5) and (6) provide that the Governor shall be responsible for the conduct of government business and the administration of any Department of government with respect to the matters set out in paragraphs (a) and (b) of sub-section (2) as set out above. In practical terms, this means the International Financial Services industry, the Public Administration, and the Royal Anguilla Police Force.
56. **Administration of International Financial Services.** So far as the International Financial Services industry is concerned, this is the second most important industry in Anguilla after Tourism. In the year 1990, the supervision and administration of the industry was<sup>14</sup> taken away from the local Ministry of Finance and vested in the Governor in the aftermath of the international financial scandal involving the Bank of Commerce and Credit International. Since then, an adequate regulatory framework has been put in place in Anguilla. The industry is now supervised by an independent Financial Services Commission established by law<sup>15</sup>. A host of new laws providing for standards to be kept and creating a multitude of regulations and related offences has been put in place to ensure that the industry is properly run. In the unlikely event that it may once again become necessary for HMG to take over direct responsibility for this industry, the power to do so always remains by the use of a Statutory Instrument. It was generally agreed by all persons consulted by the Commission, except the Governor's Office, that there was no longer any justification for this area to remain one of the Governor's responsibilities.

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<sup>14</sup> The Anguilla Constitution (Amendment) Order 1990, Statutory Instrument 1990/587.

<sup>15</sup> The Financial Services Commission Act, Chapter F28 of the Revised Statutes of Anguilla.

- The Commission **recommends** that responsibility for the administration of international financial services be removed from the Governor's portfolio.
57. **Supervision of International Financial Services.** It is generally agreed that Anguilla benefits internationally from the Governor's power of supervision of the industry. It is to our advantage to be able to claim that the industry is subject to a higher supervision than can be provided locally. The Governor's power to supervise is in practice carried out by the Financial Services Commission.
58. **Constitutional Recognition of the Financial Services Commission.** By the **Financial Services Commission Act**<sup>16</sup> the House of Assembly of Anguilla established the Financial Services Commission (FSC) to supervise the financial services industry. The members of the FSC are appointed by the Governor and they report to the Governor. It is generally agreed that it is desirable that the Governor's office continue to be seen to be responsible for this aspect of the industry. The FSC is however not presently recognised under the Constitution. It was generally agreed that the FSC ought to be given constitutional recognition. The Commission **recommends** that the Constitution be amended to make provision for the FSC and for its governing law.
59. **Public Administration Department.** While the Public Administration Department is notionally under the direct control of the Governor, in practice he has for many years delegated this responsibility to the Deputy Governor.
60. **Public Service Commission:** There is a Public Service Commission, but its role under the Constitution and the enabling Act<sup>17</sup> is purely advisory. The question has arisen whether the Governor should continue to exercise a notionally sole role in the management of the public administration. The consensus is that it should not. There is no one who has made a representation to the Commission that the public administration should be placed under the control of a Minister. The choice has been between the Deputy Governor and a strengthened Public Service Commission. The role in the public administration of the Deputy Governor takes on added significance when it is remembered that the Commission has recommended that the Constitution should state that the office of the Deputy Governor should be filled by an Anguillian. The Commission **recommends** that constitutional authority for the public service should be vested in the Deputy Governor with him being required to act on the advice of a much strengthened Public Service Commission.

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<sup>16</sup> Chapter F28 of the Revised Statutes of Anguilla.

<sup>17</sup> Public Service Commission Act, Chapter P165 of the Revised Statutes of Anguilla.

61. **Royal Anguilla Police Force.** In so far as the police are concerned, the consensus is that a greater effort should be made to improve local responsibility for security and policing. No representations have been made to the Commission for control of the police to be removed from the Governor and turned over to a Minister. It was the view of persons making representations that other mechanisms be found for Anguillian institutions to become more involved in maintaining high standards in the police service. Some of these are dealt with below.
62. **Police Complaints Authority.** It is the general consensus among Anguillians making representations concerning the police that it is no longer acceptable or even effective for the Governor alone to be responsible for the police. The **Police Act**<sup>18</sup> provides for the Commissioner of Police to deal with public complaints and disciplinary matters. It is frequently alleged that complaints against the police are not attended to. Allegations of inefficiencies and improper conduct are not adequately dealt with under the present complaints mechanisms. The Commission understands that efforts are being made to improve the situation in the police force. There has been a recent announcement that an independent complaints body is soon to be put in place. The Commission **recommends** that the Constitution be amended to provide for an independent Police Complaints Authority to be established by law with the power to summon witnesses and to take evidence on oath and to make binding recommendations.
63. **Police Service Commission.** The Constitution does not provide for a Police Service Commission. The Commission has received representations that it is time for the office of Governor to share some of the responsibilities for internal security and the police with local institutions. One mechanism favoured by many of the persons making representations to the Commission is the establishment of a Police Service Commission with the Governor being required to act on their recommendations. The Commission **recommends** that the Constitution provide for an independent Police Service Commission and for its decisions regarding the establishment of the force to be binding on the Governor and the Commissioner of Police.
- Section 29: Governor's Reserved Executive Power.
64. This section provides that when the Governor is required to consult with Cabinet and he decides to act contrary to the advice given, he must first obtain the approval of a Secretary of State. He must ensure that the Secretary of State has the benefit of the advice given by Cabinet. During the review process no representations were received from the public and in the Commission's view there is nothing that needs to be changed in this section.

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<sup>18</sup> The Anguilla Police Act, Chapter A70 of the Revised Statutes of Anguilla.

**Section 30: Oaths to Be Taken by Members.**

65. During the review process no comment was received from the public and in the Commission's view the section does not require amendment.

**Section 31: Summoning of Persons to Council.**

66. This section permits the Governor to summon any public officer to a Cabinet meeting, when, in his opinion, the presence of that officer is desirable. Representations have been made to the Commission that it is more likely that the Ministers may need a particular officer to be present at a Cabinet meeting. There is a perceived problem in having the Governor be the sole person to decide whether a person should be summoned. The problem will correct itself if the Commission's recommendation in dealing with section 33 (that the Governor cease to perform the function of Chairman of Cabinet meetings) is implemented. In the event that the Governor remains as chair of Cabinet meetings, the Commission **recommends** that the section be amended to delete the words and punctuation “, in his opinion,” to make it clear that Cabinet may require the presence of any public officer that Cabinet considers desirable.

**Section 32: Summoning of Council and Transaction of Business.**

67. Sub-section (1) provides that only the Governor can normally summon a Cabinet meeting, but that he must do so if two or more Ministers request it in writing. For many years Cabinet has met every Thursday, ie, on a weekly basis. Bearing in mind that the Commission will recommend in considering section 33 that the continued chairmanship of Cabinet by the Governor is not appropriate in this day and age, and that the Premier should chair Cabinet meetings, the Commission **recommends** that this section should be amended to provide for regular weekly meetings to be summoned by the Premier, with the obligation that he must do so if two or more Ministers request it.
68. **Quorum.** Section 32(2) provides for a quorum of 5, ie, the Chairman and 4 others. At present, Cabinet consists of the Premier, 3 ministers, the Governor, the Deputy Governor, and the Attorney-General, a total of 7 persons, all with a vote. The Commission **recommends** that Cabinet should consist of the Premier and 5 Ministers each with a vote, and the Deputy Governor and Attorney General without vote. Cabinet will thus consist of 6 voting Ministers and two-non voting advisers in the form of the Attorney-General and the Deputy Governor. The Commission **recommends** that a suitable quorum would be “four Ministers including the person in the chair”.

**Section 33: Presiding in Council and Secretary.**

69. Sub-section (1) provides that the person presiding in Cabinet is to be the Governor. The Governor, the Deputy Governor and the Attorney-General, we have been assured, do not usually vote on matters to be decided by Cabinet. They do their best to advise and persuade, but leave it to the Ministers to come to a decision. This is as it should be in a democratic society. The Ministers have been elected as members of the Assembly to form the Government and to set policy for the country. They will bear the blame when things go wrong. They will reap the benefit when things go right. The Constitutional form should reflect this reality. The Governor has a right to be informed and to consult and influence Cabinet. He should not have the right to chair it. The Commission **recommends** that the section be amended to provide that Cabinet is to be chaired by the Premier. The remainder of the section does not need any change.

**Section 34: Attorney-General.**

70. The position of Attorney-General is not defined in the Constitution. In normal modern Commonwealth Caribbean democratic Constitutions the Attorney-General is not merely a government legal adviser, but is an Officer of the Court, appointed by or on the recommendation of the Judicial and Legal Services Commission. The Commission **recommends** that the Anguilla Constitution contain modern provisions recognizing the function and office of the Attorney-General.
71. **Director of Public Prosecutions.** Section 34 vests in the Attorney-General the power to institute and undertake criminal proceedings. Representations made to the Commission on the issue were unanimously of the view that it is time that a Director of Public Prosecutions be appointed for Anguilla. It is generally agreed that it is no longer appropriate or proper for the government's legal adviser to be the public prosecutor. A public prosecutor ought to be insulated from political pressures in the matter of his work. The Commission **recommends** that the Constitution provide for an independent Director of Public Prosecutions to be appointed in the usual way, ie, by the Governor on the recommendation of the Judicial and Legal Services Commission of the Eastern Caribbean Supreme Court.
72. **Code of Conduct.** In Anguilla, Cabinet Ministers are not subject to a written code of conduct as in other Commonwealth countries. At present, as the Commission is informed, the Governor seeks their voluntary submission to him of a declaration of assets. This is designed to ensure that Ministers bear in mind their obligation to be careful to avoid improper conduct in matters of conflict of interest. Such a voluntary system has proven ineffective in Anguilla as it has elsewhere. Members of the public were generally aware of the existence of anti-corruption Commissions in other Caribbean islands and of prosecutions that are presently being



conducted of past and present Ministers of Government, eg, the previous Prime Minister of Trinidad and Tobago. Representations to the Commission were unanimously of the view that it is now timely for a Code of Conduct for Ministers to be put in place and for Ministers who do not comply with it to be subject to a penalty as set out in a law. The Commission **recommends** that the Constitution be amended to provide that Ministers shall be governed by a Code of Ethics to be established by law and with appropriate penalties for breach of the Code.



Beaches of Anguilla



## CHAPTER 4: THE HOUSE OF ASSEMBLY

### Section 35: House of Assembly.

73. This section provides for the membership of the Assembly. A number of issues have arisen in the public consultations.
74. **Size of the Assembly.** The section presently provides for 7 elected members. The Commission has received many representations on the need to increase and alter the elected membership of the Assembly. Figures have ranged from a high of 21 to a low of 9 members. One very experienced member of the Opposition is of the contrary view. He has pointed out that in St Kitts where the Constitution provides for 8 Members, there have on occasion been 8 Ministers of Government. He was of the view that there is no need for there to be any more than 9 elected members if the Nominated Members are abolished. This is very much a minority view. The majority view is that there is a serious need to ensure that there are sufficient persons in the Assembly who are not in Government who will be in a position to propose resolutions and motions, to ask questions, and to debate the policies and actions of Government in order to protect the public interest. The Commission **recommends** that the section be amended to provide that the Assembly should be increased to 13 elected representatives.
75. **Elections.** In accordance with Section 35(2)(c) of the Constitution, the island is presently divided into seven constituencies. Each constituency elects one representative to the Assembly on the first-past-the-post system. The law relating to elections is found in the **Elections Act**<sup>19</sup>. It is generally agreed that the Act is very old and out of date and in need of being completely overhauled and modernised.
76. **Members At Large.** A variety of representations have been made to the Commission on the method by which members should be elected. Some would prefer to retain the present “first-past-the-post” system. Others wish to replace it by a full “proportional representation” system. Yet others, the majority, have argued in favour of having some of the representative elected on the “first-past-the-post system” from the constituencies and some elected “at large” as in the BVI. This is not something that is required to be dealt with in the Constitution. It is entirely a matter for the Assembly to change from time to time. The place to deal with the method of election is in the **Elections Act**. The Commission **recommends** that the **Elections Act** is now very much out of date and needs to be amended, preferably to introduce a system where there are 9 constituencies and 4 members elected at large, to accommodate the recommended number of 13 elected representatives.

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<sup>19</sup> The Elections Act, Chapter E30 of the Revised Statutes of Anguilla.

77. **Boundaries Commission.** One consequence of the recommendation for 9 constituencies is that the constituency boundaries will have to be redrawn. This must be overseen by an independent Boundaries Commission, which does not presently exist. The majority of persons making representations to the Commission have urged that there be 9 more or less equally sized constituencies. This is a matter for the Boundaries Commission to decide based on its analysis of the problem and the solution. The Commission **recommends** that the Constitution should be amended to provide for an independent Boundaries Commission whose duties will be established by a law.
78. **Ex-Officio Members.** Section 35(2)(b) provides for the Attorney-General and the Deputy Governor to be ex-officio members of the Assembly. A majority of persons making representations on this matter have urged that they remain in the Assembly but without a vote. A few persons have made representations to the Commission that the Constitution should be amended to provide that they should no longer be present in the Assembly, as being undemocratic for unelected officials to have either a say or a vote in the Assembly. The Commission understands that in practice the Deputy-Governor and the Attorney-General are sensitive to this issue and do not vote on divisions on controversial matters before the Assembly. The Commission is of the view and **recommends** that the Constitution should reflect reality and proper practice and should be amended to provide that the ex-officio members sit in the Assembly but without the power to vote.
79. **Nominated Members.** Section 35(2)(d) provides for two nominated members. While a minority of persons making representations were of the view that the nominated member position gave the possibility of special expertise being introduced into the Assembly and should remain, the vast majority were of the view that it was undemocratic and should be abolished. This latter view is particularly persuasive in light of the proposed increase in the number of elected positions being recommended above. The Commission **recommends** that the position of nominated member should be abolished.
80. **Campaign Funding.** This is a suitable place to deal with the issue of campaign funding. There was general recognition in the representations made to the Commission that there needs to be reform in this area. Vote-buying is perceived to be a wide-spread problem. Representatives are routinely expected by their constituents to make a regular weekly contribution to their maintenance. Hospitalisation bills are expected to be paid or contributed to. The demands increase at election time. The Commission is aware that this is not a matter strictly for the Constitution, but based on almost universal demand **recommends** that a modern law be put in place providing for the regulation of political fund-raising and

expenditure, and for the audit and publication of political accounts on a regular basis, but particularly after a general election, and with stiff penalties for infringement. The knowledge that any gift made to a constituent will be fully disclosed and published may serve to deter some of the present demands made of politicians.

**Section 36: Qualifications for Elected Membership.**

81. This section provides for persons nominated for election to have been born in Anguilla or, if not born in Anguilla, to be the child of a person born in Anguilla, and to have resided in Anguilla for at least three consecutive years immediately before nomination. The result is that a candidate who was born in Anguilla does not need to be resident in Anguilla.
82. **Anguillian Status.** The majority of persons making representations to the Commission have agreed that it is essential that the qualification that one must be an Anguillian to be qualified to be a candidate for election to the Assembly remain. The island is small, the indigenous population is being challenged by a recent increase in the immigrant population due to a boom in the tourism industry. In order to ensure and preserve social stability, the Commission **recommends** that this present qualification does not change.
83. **Birth in Anguilla.** The majority of persons making representations to the Commission agreed that a political candidate should either have been born in Anguilla or be the son or daughter of someone born in Anguilla. A few persons would have the right to be nominated and elected thrown open to all residents, but this was very much the minority view. The Commission **recommends** that the provision remain that a qualification for election be either birth in Anguilla or being the son or daughter of a person born in Anguilla.
84. **Residence in Anguilla.** The majority of persons making representations to the Commission were of the view that the test of residence for a period of three years should apply to all candidates. There was no universal agreement on what type of residence was appropriate. The Commission **recommends** that the Constitution be amended to provide that it shall be a qualification for election that a candidate should have been ordinarily resident in Anguilla for a period of 3 years before nomination.

**Section 37: Disqualifications for Nominated or Elected Membership.**

85. This section provides the disqualifications for both nominated and elected membership. Given that the Commission recommends the elimination of nominated members, the Commission now **recommends** that this section be amended to refer only to elected members.

86. **Foreign Naturalisation.** Section 37(1)(a) provides that an Anguillian who takes out a second citizenship becomes disqualified to be nominated. It is permissible to hold a second citizenship, so long as it was inherited or acquired in any other way than by virtue of one's own act. Anguillians have for generations, in the years when the economy of the island was depressed, ventured abroad in large numbers to find work. They frequently acquired for convenience the citizenship of the country in which they found safe haven, and their children are in many instances not registered as British Overseas Citizens. Many Anguillians who became US, Dutch or French citizens have now returned to live and work in Anguilla. There must be few Anguillians today who are entitled to only one passport, a British one. The majority of persons making representations to the Commission on the issue, mainly opposition politicians, were of the view that the existing restriction was desirable, and they would have it retained. They appeared to be of the view that an Anguillian taking out a second citizenship had somehow betrayed Anguilla. The Commission took a different view. The majority of the Commission favoured removing entirely the question of foreign naturalisation from qualification to be nominated, so that any Anguillian, regardless of his holding any second citizenship or the method by which he acquired it, should be qualified to be nominated and to run, and the Commission so **recommends**.
87. **Ministers of Religion.** Section 37(1)(b) disqualifies a minister of religion from being nominated. Minister of religion is defined in sub-section (2) to mean any person in holy orders and any other person the functions of whose principal occupation include teaching or preaching in any congregation for religious worship. This is a traditional restriction inherited from Britain where the Church is represented in Parliament by Bishops who sit in the House of Lords. The Church in Britain was not permitted to have a "second bite at the cherry" by having its clergy run for election to the House of Commons. No such rationale applies in Anguilla. The majority of politicians making representations to the Commission were of the view that the disqualification should be retained. They were apparently of the view that Ministers of Religion enjoy an unfair advantage over other politicians in being able to campaign to a captive audience each Sunday. They seemed to place little reliance on the good judgment of the congregation. In Anguilla as elsewhere most congregations consist of persons from all walks of life and supporting every shade of politics in the country. In the opinion of the Commission no sincere Minister of Religion would risk harming his congregation by running in election or even engaging directly in party politics. The Commission was of the view that the reputation of the Assembly could only be improved by having from time to time a "man of the cloth" present among its voting members and the Commission **recommends** that this disqualification should be removed.

88. **Convicted Persons.** Section 37(1)(f) disqualifies any person under a sentence of death or of imprisonment for a period exceeding twelve months. This disqualification only applies only during the period of imprisonment. The section will need to be amended to remove the reference to a sentence of death.
89. **The Character of the Crime:** Representations have been made to the Commission to the effect that the type or length of sentence is not a proper mechanism for calculating the bad character of a candidate who should be disqualified. Some persons have suggested that it is not every conviction that would render a person unfit to sit in the Assembly. For example, a conviction for dangerous driving or manslaughter by driving might attract a sentence of more than one year while a conviction for child abuse might attract a sentence of less than one year. It is the latter person who ought to be disqualified, and not the former. Some persons have urged that it is not the bad character that is being addressed by this qualification, only the procedural complication of having a candidate campaign while serving a lengthy prison sentence. Other persons have represented that it ought to be left to the good sense of the electorate whether they want to elect a candidate with a conviction for a particular offence, it is not for the Constitution or any law to seek to disqualify persons convicted of an offence. These persons have urged that the electorate ought not to be deprived of their right to elect the person they believe will best represent their interests in the legislature. The Commission, however, agrees that every effort should be made to encourage only the highest standards of our political representatives. The Commission does not see any advantage to the electorate in having the disqualification apply only when there has been a sentence of greater than one year and **recommends** that the disqualification ought to apply without regard to how long the sentence is.
90. **The Period of Disqualification:** A number of persons have supported the suggestion that the ban should be for life, regardless of the offence for which the candidate had been convicted or the sentence which has been imposed. Others have pointed out that such a disqualification would lay potential candidates open to trumped up charges brought with a view to ensuring their disqualification, and have urged that the period remain as it is in section 37(1)(f). In the view of the Commission, the disqualification is not intended to be a mere procedural one of preventing persons who are serving a particular sentence from campaigning during the period of their sentence, but should send a clear message that the public expects the highest standards of conduct from their representatives. The Commission recognises that it will be more difficult to come up with a definition that indicates reprehensible conduct, but believes that this will be preferable to the test that presently exists. The Commission **recommends** that in the

case of a crime of dishonesty or immorality the disqualification should be for life regardless of the period or nature of the sentence imposed by the court. In all other cases the disqualification should be for the period of the term of the sentence if any.

**Section 38: Tenure of Office of Members of Assembly.**

91. During the review process various representations were made by a small number of persons to the Commission to place term limits on the Premier, Ministers of Government, and Members of the Assembly. The primary concern of these persons appeared to be to eliminate or reduce corruption, cronyism and conflicts of interest. One group urged that the constitutional limits should be 4 consecutive terms for elected representatives, 2 consecutive terms for the Premier, and 3 consecutive terms for a Minister. The Commission considers that this representation, its implications and consequences, have not been publicly agreed. It is anti-democratic. The Commission does not recommend any change. The only amendment that is required is to remove the reference to a nominated member.

**Section 39: Vacation of Seat on Sentence.**

92. This section needs to be amended to remove the references to (1) a sentence of death and (2) to nominated members. Otherwise, it provides that a member's seat shall become vacated 30 days after his sentence to a term of imprisonment for a term exceeding twelve months. For the reasons given in dealing with section 37(1)(f) above, the Commission **recommends** that the reference to a term of imprisonment for a period exceeding twelve months should be deleted and that in the case of a crime of dishonesty or immorality the member shall be disqualified from sitting in the Assembly for life regardless of the period or nature of the sentence imposed by the court and in all other cases the disqualification should be for the period of the term of imprisonment if any.

**Section 40: Temporary Members of Assembly.**

93. This section provides for the temporary membership in the Assembly of someone who has been appointed to perform the functions of the Attorney-General or the Deputy Governor while they are ill or absent from Anguilla. During the review process no comment was received from the public and in our view the section does not need to be amended.

**Section 40A: Leader of Opposition.**

94. This section provides for the appointment of a Leader of the Opposition. The Governor is to appoint the Member of the Assembly who is best able to command the support of the Members in opposition to the Government. It has been represented to the Commission that the section has proven unworkable in the circumstance where there are two parties in opposition with equal seats and when they do not agree on who should be the leader.



The result has been long periods of time when the office of Leader of the Opposition has not been filled in spite of there being members of the opposition present in the Assembly. It was agreed that there should be a mechanism for breaking the impasse. The Commission is persuaded by the suggestion that, in such an event, the Constitution should provide that the Governor shall appoint the member who has the longest period of past service in the Assembly, ie, the most senior member of the opposition, and the Commission so **recommends**.

**Section 41: Determination of Questions as to Membership of Assembly.**

95. **Nominated or Temporary Members.** Sub-section (1) provides for the Governor to be the sole judge of whether a person has been appointed a nominated member or a temporary member. During the review process no comment from the public was received. Other than removing the reference to nominated members, this sub-section does not require amendment.
96. **Elected Members.** Section 41(2) deals with elected members. It provides for who is entitled to bring an action before the High Court to determine whether a person has been validly elected or has vacated his seat. No representations have been made to the Commission for altering this section, and the Commission does not consider that any amendment is necessary.

**Section 42: Penalty for Sitting or Voting in Assembly when Unqualified.**

97. This section provides a penalty of \$100.00 for each day that a member who has reasonable grounds for believing that he is not entitled to do so sits or votes in the Assembly. The penalty is recoverable by suit of the Attorney-General in the High Court. Representations have been made by several persons to the Commission that this provision is unworkable.
98. **The Offence.** First, it seems strange that an amount of money should be established as a penalty by such a permanent and fundamental document as a Constitution. The Commission **recommends** that it would be more seemly for the section to declare the act of sitting while unqualified to be an offence and to leave it to a law to impose the penalty.
99. **The Penalty.** Second, with the fall in the value of money over the past 24 years, the amount of \$100.00 is not worth what it was. The Commission **recommends** that it should be set in the appropriate law at \$1,000.00.
100. **The Test.** Third, it has been pointed out that the test for the offence is a subjective one. A member may claim to have reasonable grounds for believing that he is entitled to sit in the Assembly, but he is in fact not so

entitled, and it may be impossible to prove that he did not have reasonable grounds for his belief. It would be cleaner and clearer if the test were an objective one. Such a test could be the finding by a court that a person was not qualified to be elected. The Commission **recommends** that the section be amended to provide that the offence is committed when a member continues to sit or to vote after it has been held by a court that he is not so entitled.

**Section 43: Qualification of Voters.**

101. This section provides for three categories of persons resident in an electoral district to be qualified. The first (1) is a person who is a British Dependent Territories Citizen, now styled a British Overseas Territories Citizen (BOTC), born in Anguilla and domiciled there at the qualifying date<sup>20</sup>. The second (2) is a Belonger (presumably not a BOTC citizen born in Anguilla) who has resided in Anguilla for not less than 12 months and is the spouse, widow or widower, or the child or the spouse of a child of a person born in Anguilla. The third (3) is a Belonger (presumably who does not fall in one of the above two categories) who is domiciled in Anguilla and has resided there for at least 5 years immediately before the qualifying date. This multiplicity of qualifications is confusing and gives rise to opportunities for abuse.
102. **The Test of Citizenship.** British Overseas Territories Citizenship is granted by a non-Anguillian Act of the British Parliament. It is not limited to Anguillians. It applies to the BOTCs of other overseas territories. There is no reason why these other BOTCs should be entitled to vote in Anguilla. Only Anguillians should be qualified to vote in Anguillian elections. The Commission **recommends** that the section be amended to remove all mention of citizenship.
103. **The Belongership Test.** The qualification that one must be an Anguillian believer in order to be qualified to vote in Anguilla has found universal approval. Large numbers of transient workers and other temporary residents have moved to Anguilla in recent years, and in the view of the majority of Anguillians consulted by the Commission it is important to ensure that these temporary residents are not enfranchised with the result that island politics is affected. The Commission **recommends** Anguillian status, however acquired, be a qualification of all voters.
104. **The Test of Residence.** Section 43 presently provides that the second category of voter is a Belonger who is able to claim residence for a period of 12 months. By a large majority, Anguillians approve of the concept of a residence test, but would prefer it to be 3 years for all voters. A majority of Anguillians strongly believe that voters must be ordinarily resident in

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<sup>20</sup> By the British Overseas Territories Act 2002, c 8 of 2002 British Citizenship was conferred on all British Overseas Territories Citizens so that Anguillians enjoy both types of British citizenship.

- Anguilla. The previous residence requirement is not satisfactory. The Commission recommends that the Constitution restrict voting rights to all Anguillians who have been ordinarily resident in Anguilla for a period of 3 years at the time of the election, and the Commission so **recommends**.
105. **The Test of Domicile.** Section 43 presently provides that the first category of voter, an Anguillian who is domiciled in Anguilla, is qualified to be registered as a voter once he can claim to be resident in Anguilla. The third category of voter is a Belonger who is domiciled in Anguilla but who does not fall into one of the first two categories and who has resided in Anguilla for at least 5 years. The test for domicile is a subjective one. An Anguillian owning property in Anguilla, eg, a home that is in fact rented out, may be permanently resident in New York for 30 years, never during that time having returned for one day to Anguilla, and still claim to be domiciled in Anguilla, once he can allege that it is intention one day to return to live in Anguilla. It is this section that permits candidates to bring back at election time persons who have been long absent from the island to vote for them. The Commission considers that this abuse can be corrected by requiring that only Anguillians who have been ordinarily resident in Anguilla for a period of three years are entitled to be placed on the voters' list. The Commission **recommends** that the test of domicile should be entirely removed as a qualification for voting.
106. **Multiple Registration.** One abuse that has been drawn to the Commission's attention is that some voters are registered in more than one electoral district. When a voter changes his address, he frequently remains registered in his old district even after he has registered to vote in his new district. The Commission considers that this is a fault with the present system of voter registration. It is to be hoped that Anguilla will soon upgrade to a more modern computerized system that will make it easier for such anomalies to be detected early and to be corrected. In any event, this is a function of enforcement of an existing law. It is the duty and responsibility of the candidates and their representatives to make the necessary representations to the Supervisor of Elections and to have the errors corrected in the constituencies that concern them. There is nothing that can be amended in the Constitution or the law to correct this problem.
107. **Revision of the Voters List.** Representations have been made to the Commission that the present system of periodic revisions of the Voters' List is out of date and encourages inefficiency. The Commission is impressed with the arguments in favour of continuous registration, and **recommends** that the **Elections Act**<sup>21</sup> be amended to so provide.

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<sup>21</sup> The Elections Act, Cap E30 of the Revised Statutes of Anguilla.

**Section 44: Disqualification of Voters.**

108. Section 44(1)(a) disqualifies a person who has been sentenced to death or to a term of imprisonment longer than 12 months, or who is of unsound mind, or disqualified under a law relating to elections offences. The Commission has received representations to the effect that the test in the case of conviction of an offence should not be the length of the sentence but the seriousness of the crime, and that the disqualification should be for life. The Commission considers this recommendation is draconian, is not a majority view among the public, and the Commission does not recommend any alteration in the present provision.

**Section 45: Right to Vote at Elections.**

109. This section limits voters to voting for one district only. The Commission **recommends** that this section be amended to provide for voting for “at large” candidates.
110. **Absentee Voting.** The Commission notes that section 45(2)(d) authorises the Act to provide for persons unable to attend to vote in person still to vote. This would permit the Assembly to make provision for either of postal voting or overseas balloting. There are no representations that have been made to the Commission that this section of the Constitution needs any amendment and none is recommended.
111. **Postal Ballots.** Many persons have complained to the Commission about the practice of voters flying in from New York or St Thomas at election time. It has been suggested that because some constituencies turn on very small margins, there is something unfair or improper in Anguillians who are temporarily working or residing overseas flying in to vote. A number of persons have represented to the Commission that the **Elections Act**<sup>22</sup> should be amended to permit either postal or overseas balloting, as such a system would not favour the candidate with the deepest pocket who could afford to fly in his supporters to vote for him. The Commission **recommends** that the **Elections Act** be amended to provide for otherwise qualified persons who are unable to attend to vote in person to be able to cast their ballots at elections.

**Section 46: Laws as to Elections.**

112. This section authorises the Assembly to enact legislation dealing with elections provided that the Act does not conflict with the Constitution. The present Act is the **Elections Act**<sup>23</sup>. In the view of the Commission this section does not require any amendment.

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<sup>22</sup> The Elections Act, Chapter E30 of the Revised Statutes of Anguilla.

<sup>23</sup> The Elections Act, op. cit.

113. **Elections Act**<sup>24</sup>. During the review there was a variety of recommendations made for the amendment of the **Elections Act**. This Act is now very old, having been inherited from the Associated State. It needs to be amended to deal with the issues set out above, but the Commission received no specific representations for amendment other than those that are set out above. The Commission **recommends** that the Act be the subject of further review with the objective of coming to some national consensus on its modernisation.



Anguilla's Tourism Industry

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<sup>24</sup> The Elections Act, op. cit.



## CHAPTER 5: POWERS AND PROCEDURE IN THE HOUSE OF ASSEMBLY

### Section 47: Power to Make Laws.

114. This section is the usual section that provides for the Governor to assent to laws passed by the Assembly. During the review process no representations were received from the public and in our view the section does not require any amendment.

### Section 48: Royal Instructions.

115. This section provides for the Governor and the Assembly to conform to any Royal Instructions<sup>25</sup>. During the review process no representations were received from the public and in our view the section does not require any amendment.

### Section 49: Rules of Procedure.

116. This section authorises the Assembly to make its own rules of procedure<sup>26</sup> either subject to the Constitution or to any Royal Instructions. In representations made to the Commission, it was the general consensus, particularly among elected representatives, that the present Rules are out of date and in need of revision, but that activity is beyond the scope of this review. During the review process no representations were received from the public for alteration of this section and in our view the section does not require any amendment.

### Section 50: Presiding in Assembly.

117. This section provides for the election of a Speaker. The Assembly is to elect a person who is qualified for election to the Assembly, but who is not a member of the Executive Council, to be the Speaker. Representations have been made to the Commission that there is a lacuna in the section in that it does not indicate who presides in the Assembly when there is no Speaker, eg, immediately after a general election. Section 50(5) provides for a member of the Assembly to be elected if both the Speaker and the Deputy Speaker are absent. That would permit some person to be elected by the Assembly for that sitting to preside until the Speaker has been elected. Section 50(6) provides that references in sub-section (5) to being absent include references to circumstances where the office of Speaker or Deputy Speaker is vacant. In the circumstances, there is no lacuna and the Commission does not recommend any amendment to the section.

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<sup>25</sup> The present ones being the Anguilla Royal Instructions 1982, SRO 13/1982, as amended by SRO 13/1999.

<sup>26</sup> The present rules of procedure are the Legislative Assembly (Procedure) Rules 1976, SRO 10/1976 as amended by the House of Assembly (Procedure) (Amendment) Rules 1992, SRO 8/1992.

**Section 51: Assembly May Transact Business Notwithstanding Vacancies.**

118. This section provides for the validation of business conducted when the Assembly is not fully constituted. During the review process no representations were received from the public and in our view the section does not require any amendment.

**Section 52: Quorum.**

119. This section provides for a quorum to be present. A quorum is stated to be two-thirds. A number of issues have been raised in representations made to the Commission.
120. **Fractions of a Person.** The provision is ambiguous when the number of members present does not produce a whole number when divided by three. It has been suggested to the Commission that a person is a discrete object that cannot be divided into fractions. The question has been raised whether any resulting fraction ought to be either rounded up or down. It has been represented that a fraction of a person must include the whole person. The suggestion is that if the formula of a percentage is retained, an amendment be made specifying that any resulting fraction should be rounded up. In the event that the Commission's recommendation is accepted and the Assembly is enlarged to 13 elected and voting members, then the quorum provision would be two-thirds of 13, a figure which would produce a fraction. The Commission **recommends** as set out below that the formula of a percentage for calculating the quorum be abandoned in favour of a whole number.
121. **Size of the Quorum.** A quorum requirement is not designed to frustrate the holding of a meeting in the event that the requisite number of persons is not present, but is designed to ensure that members cannot complain if several of them choose to be absent from a discussion and a decision is arrived at with which they do not agree: the meeting will then be lawfully constituted once the quorum is present. Representations have been made to the Commission by a variety of persons concerning whether a quorum ought to remain set at so high a percentage as two-thirds. It has happened in the past that the Opposition boycotting the House has resulted in a lack of quorum and the inability of the House to do the people's business. The Commission has made a comparison of the Anguilla provision with several Commonwealth Caribbean quorum requirements, and finds that two-thirds is inordinately high<sup>27</sup>. The norm is

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<sup>27</sup> Barbados: Senate 21 members, quorum 8;  
House 24 members, quorum unascertained;  
Jamaica Senate 21 members, quorum 8;  
House 45 members, quorum 16;  
Trinidad Senate 31 members, quorum 10;  
House 36 members, quorum 12;  
Montserrat House 11, quorum 5;



between one half and one third. The Commission **recommends** that if the elected members be increased to 13 as recommended, the quorum be set at the figure 7, a simple majority.

**Section 53: Voting.**

122. This section provides for decisions to be made by a simple majority vote and for the Speaker to have a casting vote. During the review process no representations were received from the public and in our view the section does not require any amendment.

**Section 54: Summoning of Persons to Assist Assembly.**

123. This section permits the Speaker to summon any person whose presence in his opinion is desirable to a meeting of the Assembly. That person is entitled to take part as if he was a member, but shall not be entitled to vote. The term “Assembly” is not defined in the Constitution to include committees of the Assembly. The Speaker does not necessarily preside at all meetings of committees of the Assembly. It was generally accepted that it would be advantageous for better use to be made by the Speaker, at the request of either the Government or the Opposition, of expert members of the public willing to donate their time and expertise to the work of the Assembly.
124. **Committees of the Assembly.** Representations have been made to the Commission that the power to summon appears to be limited to a plenary session of the Assembly and not to extend to committees. It has been urged that the power to summon persons to assist the Assembly should extend to committees of the Assembly, particularly to the Public Accounts Committee<sup>28</sup>. The Assembly and its committees ought not to be constitutionally ham-strung in its ability to exercise oversight over the work of the Government. The Commission agrees that the power to summon persons to assist ought to extend to committees of the Assembly, and **recommends** that the section be amended to allow this.
125. **Who Should Summon.** It has been urged that the power to summon should extend to the Leader of the Opposition, or the leader of government business, and should not be limited to the Speaker. It has been urged that limiting the power to the Speaker, usually a nominee of the Government, unnecessarily restricts the power of the Assembly to supervise the activities of Government. Others have urged that the Speaker’s control of the Assembly would be weakened if members of the Assembly or the chairmen of committees were permitted to summon

<sup>28</sup> Rule 66A(4)(d) of the Rules of Procedure empowers the PAC to summon any public officer to attend and to provide documents and to give information, but this is limited to civil servants and not to “any person”.

persons outside of the permission of the Speaker to attend meetings of the Assembly or committee meetings. The Commission is not persuaded that the Speaker's control of the Assembly should be diminished by introducing a constitutional provision that dilutes his ability to determine who is properly before the Assembly. Any member wanting to summon a member of the public to speak to the Assembly should secure the acquiescence of the Speaker whose office will prepare and serve the necessary summons. That reservation does not apply to meetings of committees over which the Speaker does not preside. The Commission **recommends** that the section be amended to provide a power for the person presiding over any committee of the Assembly to summon to a meeting of the committee any person whose presence in his opinion is desirable, with a power for the committee to examine that person on oath.

126. **Public Accounts Committee.** This Committee (the PAC) is traditionally in parliamentary democracies an important tool for public scrutiny of the manner in which Government spends public funds and is an essential adjunct to the functions of the Chief Auditor. The PAC is not mentioned in the Constitution<sup>29</sup> and the Commission is advised that it has never in the history of the Constitution of Anguilla met to perform its duties. During the review process the Commission received several recommendations that the Constitution be amended to ensure that this situation changes. One popular suggestion was that the Constitution should be amended to provide that the PAC shall meet with power to summon witnesses and to take evidence on oath and be required to publish its report. Another was that the Constitution be amended to provide that the Committee include non-parliamentarians appointed by the Governor to ensure political independence. A third was that the Leader of the Opposition should no longer be the designated chairperson, but that the Speaker or a member appointed by him should chair the PAC. The Commission **recommends** that the Constitution and the Rules of Procedure be amended to provide for a PAC, with (a) power to summon any person whose presence in the opinion of the chair is desirable to be examined on oath, and (b) with the Speaker or a member nominated by him as chairperson, and (c) with representation from both sides of the Assembly, and (d) with the power to co-opt members of the public to assist it in the performance of its functions, and (e) with a requirement that its report be published at least annually. It will be necessary for the Assembly to provide adequate funding and other resources for the PAC to carry out its functions.

**Section 55: Introduction of Bills.**

127. Sub-section (1) of this section provides for any member of the Assembly to introduce any Bill, motion, or petition. During the review process no

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<sup>29</sup> Provision is made for it in the Rules of Procedure where the Leader of the Opposition is the designated chairperson, but such provision has not been effective in ensuring that the committee actually meets or does any of its usual work.

representations were received from the public and in our view the section does not require any amendment.

128. **Money Bills.** Section 55(2) provides that a money bill, that is, one imposing or increasing any tax or any charge on the revenue, shall not be introduced except on the recommendation of the Governor. Representations have been made to the Commission that the reference to the Governor in this section is anomalous. Other than in the areas reserved to the Governor, the elected representatives of the people of Anguilla have charge of the government of Anguilla. It is they who in practice take the political decision to impose or increase taxes or to pass legislation that places a charge on the public revenue. The Commission **recommends** that the section be amended to replace the words “the Governor” with the words “the government bench”.

Section 56: Governor’s Legislative Reserved Powers.

129. This section provides that the Governor, when he considers it expedient in the interests of public order or public faith that any Bill introduced in the Assembly should have effect, then if the Assembly fails to pass it, he may declare that the Bill shall have effect as if it had been passed. The only restrictions on the Governor’s powers to legislate under this section are that the Bill must have been introduced into the Assembly and he must act after receiving the prior written instructions of the Secretary of State. The only recourse that the members of the Assembly have to such an action of the Governor is to have their objections passed on to the Secretary of State, if they put it in writing within 14 days and submit it to the Governor.
130. **Alternative Powers.** The Commission is advised that this power has never in the history of Anguilla been used. The Commission has been reminded that there are other mechanisms available to the Governor and the Secretary of State under the **Anguilla Act**<sup>30</sup> and other British legislative instruments to have the British Parliament pass laws or the Queen in Council to sign into effect Statutory Instruments and apply them to Anguilla. In the past, when the government has been reluctant to introduce legislation called for by the Secretary of State, eg, to abolish the death penalty, or to remove the offence of buggery from the statute book, the UK government has not hesitated to create a Statutory Instrument and to apply it to Anguilla. The majority of those persons making representations to the Commission, including both Government Ministers and members of the opposition, agreed that the Anguilla Constitution should not contain provisions permitting a Governor to force legislation through the Anguilla House of Assembly. Such a provision harks back to the earliest days of colonialism, and is anomalous and undemocratic. The Commission **recommends** that the section be repealed in its entirety.

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<sup>30</sup> The Anguilla Act 1980 c.67 of the UK Parliament.

Section 57: Assent to Bills.

131. Sub-section (1) provides in the standard way for a Bill to become law after either Her Majesty or the Governor has assented to it. Sub-section (2) provides for the Governor to be able to reserve a Bill for the signification of Her Majesty's pleasure. He must reserve any Bill which appears to him repugnant to the Constitution or which deals with the privileges of the Assembly unless he has the authority of the Secretary of State to assent to it. During the review process no representations were received from the public and in our view the section does not require any amendment.

Section 58: Return of Bills by Governor.

132. This section provides for the Governor to return to the Assembly any Bill that he considers requires an amendment, and the Assembly is required to deal with his recommendation. The Commission is advised that this power has never in the history of Anguilla been used. No problem would arise in practice when on a return of a Bill to the Assembly the Assembly agreed with and adopted the Governor's recommendation. There is no provision for what is to happen if the Assembly insisted on passing the Bill in the original form without his suggested amendment. While the provision for a second look is not objectionable, modern democratic thinking would require that once the Assembly has considered his recommendation on a returned Bill and has rejected it, he should be required to assent to it. If the reason for his objection is that the Bill is repugnant to the Constitution, then the provisions in section 57 would apply. If he considers that the bill is impolitic, then that is a matter for which the elected representatives should bear the political consequences. It is no longer appropriate in a British Overseas Territory for a Governor to be able to prevent the passage into law, after a reasonable period for reconsideration, of a statute approved of by a majority of the elected representatives of the people. The Commission **recommends** that the section be amended to provide that the Governor shall assent to the Bill on its being returned to him for his assent a second time, with or without amendment by the Assembly.

Section 59: Disallowance of Bills.

133. This section provides that any law to which the Governor has given his assent may be disallowed by a Secretary of State. This provision is traditional in a colonial setting. In the old days, when dispatches from a governor might take several months to be transmitted by sailing ship from the colony to Whitehall, it was necessary for there to be a power of disallowance by the Secretary of State when it was discovered that a law which had been passed by a colonial Assembly, and assented to by the Governor, was in breach of British or international law. In these days of instantaneous communication, such a situation can never again arise, and the provision is anachronistic, undemocratic and unnecessary once the

Governor has assented to the Bill. The Commission **recommends** that it be removed.

Section 60: Oath of Allegiance.

134. This section provides for members of the Assembly to take the oath of allegiance. The Commission has not received any representation from the public concerning it and, other than the removal of the reference to nominated members, considers that it does not require any amendment.

Section 60A: Registration of Interests.

135. This section provides for the Speaker to maintain a Register of Interests. It requires a law to be passed to give effect to its provisions. The Commission is advised that no such law has ever been introduced into the Assembly. During the review process, the Commission received several representations that this provision needs to be strengthened to provide for an anti-corruption Commission and for anti-corruption legislation to be drafted and passed without delay. The Commission **recommends** that this section be strengthened by way of the introduction of anti-corruption provisions, and for the appropriate law, including severe penalties for any infringement, to be put in place without delay.

Section 61: Privileges of Assembly and Members.

136. This section provides for the Assembly to pass a law determining and regulating the privileges of the Assembly and its members. No such law has ever been introduced into the Assembly. There are suitable precedents that are available for the Assembly to consider. This is an oversight which should be corrected. Though no representations have been received from the public, the Commission **recommends** that a suitable Bill be drafted and presented to the Assembly for passing without further delay.

Section 62: Sessions.

137. Sub-section (1) provides for the Governor to proclaim sessions of the Assembly. During the review process the Commission received no representation for reform, and is of the view that this provision is appropriate constitutionally.
138. **Minimum Number of Sessions.** Section 62(2) provides for a minimum of one session of the Assembly to be held in every year. In recent years the Assembly has sat on average three or four times a year, for a day or two at each sitting. The Commission has received several representations that at a salary of EC\$7,500.00 per month<sup>31</sup> the members of the Assembly are over-paid for the little work that they do. It is the general feeling that

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<sup>31</sup> The salary of a Permanent Secretary, by comparison, is approximately EC\$10,000.00.

once the Assembly is enlarged to a size that permits committees<sup>32</sup> to be formed, the work of the Assembly will necessarily increase and the frequency of sittings will rise. Representations have been made to the Commission that the Assembly should be constitutionally required to sit regularly, say once or twice per month. However, the Commission is not sure how such a provision would work in the event that neither the Government nor the Opposition has any work to be laid before the Assembly on a monthly or bi-weekly basis. Based on present experience, if it is thought desirable to provide for more regular meetings, that provision might better be found in the revised Rules of Procedure of the Assembly which can be altered from time to time as necessary. The Commission does not recommend any change in this constitutional provision.

**Section 63: Prorogation and Dissolution.**

139. This section provides for the Governor acting in accordance with the advice of the Premier to prorogue or dissolve the Assembly, and in any event to dissolve it at the expiration of five years. During the review process no representations were received from the public and in our view the section does not require any amendment.

**Section 64: General Elections.**

140. This section provides for general elections to be held within two months after every dissolution. During the review process no representations were received from the public and in our view the section does not require any amendment.

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<sup>32</sup> Including a Privileges Committee, a Resolutions Committee, a Motions Committee, a Private Members' Bill Committee, and all the other committees that are normally found in a British Overseas Territory.

## CHAPTER 6: THE PUBLIC SERVICE

### Section 65: Public Service Commission.

141. This section provides for the Governor to appoint a Public Service Commission (PSC) consisting of 3 members appointed by him in his discretion and 2 after consultation with the public service staff associations<sup>33</sup>. The Governor after consulting the Premier appoints one of the members to be the Chairman<sup>34</sup>. Members serve for a period of 2 years<sup>35</sup>. The PSC has only advisory powers, and the Governor appoints, removes and exercises disciplinary control entirely in his discretion<sup>36</sup>.
142. **Political Neutrality.** In representations made to the Commission there was general consensus that the public service should continue to be kept away from political control or influence. Questions have arisen and representations have been made only in relation to the appropriateness of continuing to have all matters concerning the public service under the sole control of the Governor, a Foreign and Commonwealth Office appointee, and out of the influence or control of any indigenous Anguillian institution. Such a provision does not allow island institutions for governance to grow in experience and maturity. Institutionalising the head of the public service in the office of a local Deputy Governor will go a long way to resolving this embarrassment. Another appropriate and timely change would be to strengthen the PSC and to increase its powers in relation to the public service. This will permit democratic and civil institutions in the island to grow and develop, while maintaining the independence of the service. Britain's overall responsibility for the protection of the service from political interference will be adequately met by continuing to have the Deputy Governor in control of it.
143. **Appointment to the PSC.** There has been a suggestion that it is time for the Premier and the Leader of the Opposition to have a say in the appointment of persons to the PSC. On the other hand, a majority of persons making representations to the Commission have emphasized to the Commission that politicians should be kept away from the public service. The Commission considers that this can be achieved by the Constitution providing that the majority of the membership of the PSC should continue to be filled by the Deputy Governor acting in his discretion and not after consultation or on the advice of either of the Chief Minister or the Leader of the Opposition, and the Commission so **recommends**. The other two positions should continue to be filled after consultation with public service staff associations.

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<sup>33</sup> Sub-section (1).

<sup>34</sup> Sub-section (2).

<sup>35</sup> Sub-section (4).

<sup>36</sup> Section 66(1).

144. **Tenure.** It has been pointed out to the Commission that a term of two years is too short to ensure that the members enjoy security of tenure. Security of tenure is one of the mechanisms for the guarantee of independence of thought and action. The Commission **recommends** that the term of office of the members of the PSC be extended from two years to five years.
145. **Who Appoints.** The Commission has elsewhere recommended that the Constitution be amended to make the Deputy Governor the official head of the public service. The Commission **recommends** that the power of appointment of the members of the PSC should be constitutionally vested in the Deputy Governor.
146. **Consultation.** The Commission does not consider that there is any valid objection that can be made to the Deputy Governor consulting with the Premier in the appointing of the Chairman, and does not recommend any change.

**Section 66: Power to Appoint, Etc, to Public Office.**

147. This section provides that total control of the public service vests in the Governor acting in his sole discretion in relation to the Deputy Governor, the Attorney-General, and the Chief Auditor. In relation to all other officers he acts after consulting the PSC, but he is not obliged to act on their advice. In relation to permanent secretaries or heads of departments, he consults with the Premier, but is not obliged to take his advice.
148. **Head of the Public Service.** The Commission **recommends** for reasons already given that the head of the public service should be the Deputy Governor and not the Governor.
149. **Appointment of Deputy Governor, Attorney-General, and Chief Auditor.** The Commission **recommends** that the Governor should continue to appoint the Deputy Governor, the Attorney-General, and the Chief Auditor, but after consultation with the Premier and the Leader of the Opposition.
150. **Appointment of Permanent Secretaries.** There were representations to the Commission that the PSC ought to play an increased role in the appointment of senior members of the public service, and that it should not be left to the unfettered discretion of the head of the public service. The only discussion was whether the Deputy Governor ought to be obliged to act on the advice of the PSC or only after consultation. The Commission **recommends** that the Deputy Governor should appoint Permanent Secretaries and Heads of Departments after consultation with the PSC and the Premier.



151. **Powers of the PSC.** Otherwise, generally, the PSC should be given increased powers. The Commission **recommends** that the Constitution should provide that the Deputy Governor should act on the advice of the PSC and not merely after consultation.
152. **Review of Decisions.** The Commission considered the problem that would arise if the head of the public service did not agree with a decision taken by the PSC in a particular matter, and the lack of any present review provision. The Commission **recommends** that the revised Act and/or Regulations should provide that the Deputy Governor may refer a decision of the PSC back for reconsideration if in his view there is some matter that should be reconsidered, but that he should be obliged to act on their advice after they have done so.

**Section 67: Judicial Service Commission.**

153. This section provides for a local Judicial Service Commission (JSC) consisting of the Chief Justice, another judge nominated by the Chief Justice, and the Chairman of the Public Service Commission. Anguilla does not have its own court system. It is a member country of the Eastern Caribbean Supreme Court. The jurisdiction of that court is set out in the **Eastern Caribbean Supreme Court (Anguilla) Act**<sup>37</sup>. The High Court judge for Anguilla is appointed by the Judicial and Legal Service Commission (JLSC) established under the **Courts Order**<sup>38</sup>. As Anguilla moves to increased self-determination, the Commission **recommends** that the Anguilla Constitution ought to speak to the appointment of Judges by the JLSC.

**Section 68: Power to Appoint, Etc, to Judicial Offices.**

154. This section provides that the Governor, in appointing Magistrates, Registrars and other officers who are required to have legal qualifications, is required only to consult the JSC, he is not obliged to act on its advice.
155. **Judicial and Legal Services Commission.** Questions have been raised as to whether the judicial and legal officers referred to in section 68 ought to continue to be appointed by the Governor, or whether they should now be appointed, as in other states and territories within the jurisdiction of the Eastern Caribbean Supreme Court, by the JLSC. Representations have been made as to whether it is necessary to retain a local JSC, given that the JLSC is authorised by the **Courts Order**<sup>39</sup> to perform all the functions of the JSC. The Commission **recommends** that the JSC be abolished and the appointment of Magistrates, Registrars and other legal officers be

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<sup>37</sup> The Eastern Caribbean Supreme Court (Anguilla) Act, Chapter E15 of the Revised Statutes of Anguilla.

<sup>38</sup> West Indies Associated States Supreme Court Order 1967, No 223 of 1967.

<sup>39</sup> No 223 of 1967 op. cit.

brought into line with other member states and territories of the ECSC and be appointed by the Governor on the advice of the JLSC.

**Section 69: Applicability of Pensions Law.**

156. This section provides for the pensions law applicable to public officers. During the review process no representations were received from the public and in our view the section does not require any amendment.

**Section 70: Pensions, Etc, Charged on Revenues of Anguilla.**

157. This section provides that pensions shall be a charge on the revenue of Anguilla. During the review process no representations were received from the public and in our view the section does not require any amendment.

**Section 71: Grant and Withholding of Pensions, Etc.**

158. This section provides for the Governor to grant any award other than an award to which the person is entitled. During the review process no representations were received from the public and in our view the section does not require any amendment.

## CHAPTER 7: MISCELLANEOUS

### Section 72: Appeals to Her Majesty in Council.

159. This section provides for an appeal from the Court of Appeal to lie to Her Majesty in Council. The Caribbean Court of Justice (CCJ) has recently been established with its headquarters in Trinidad to serve as the final court of appeal for Caribbean states and territories. Most independent Commonwealth Caribbean nations still recognise the Privy Council as their final court and have not yet recognised the CCJ. The Commission believes that in time, when the CCJ has become more widely accepted in the West Indies as a suitable replacement for the Privy Council, Anguillians are likely to prefer a final court of justice that is embedded in Caribbean culture and jurisprudence. During the review process no representations were made to the Commission that there should be any immediate move to replace the Privy Council by the CCJ. It does not appear to the Commission to be appropriate at this time to make any recommendation in relation to the CCJ or to altering the island's reliance on the Privy Council.

### Section 73: Interpretation.

160. In representations made to the Commission, this section has been criticized for being placed at the end of the Constitution. The placing of a definition section at the end of a document does not add to the clarity or ease of understanding of the document. It would be more useful if it were located either at the beginning of the Constitution, or preferably, its contents were reallocated to the relevant provisions of the Constitution. The Commission **recommends** that there be no definition section, but that the definitions be placed in close relation to the relevant provisions of the Constitution.

### Section 74: Public Seal.

161. This section provides for the Governor to keep and use the public seal. During the review process no representations were received from the public and in our view the section does not require any amendment.

### Section 75: Grants of Land.

162. This section provides for the Governor to execute grants of public land in Anguilla. Section 28 requires that he does so in accordance with the advice of Council. Representations have been made to the effect that large or valuable tracts of Crown land should not be disposed of without a resolution of the House of Assembly. This suggestion would contribute to transparency and good governance. There was no consensus as to what constituted a large or valuable tract of land. The Commission **recommends** that no Crown land in Anguilla in excess of one acre be sold, leased, charged, exchanged, or otherwise disposed of without a resolution of the House of Assembly.

**Section 76: Governor’s Power of Pardon.**

163. This section provides for the Governor to have, subject to any Instructions from the FCO, the sole power of pardon. He does not act on the advice of anyone in Anguilla. This provision is anachronistic and inappropriate at this time. The Governor should exercise the power of pardon on the basis of the recommendation of an independent local Anguillian committee. The Commission **recommends** that the section be amended to provide that the power of pardon is exercised by a Mercy Committee consisting of the Governor as chairman, the Commissioner of Police, the representative of the Council of Churches, the representative of the Bar Association, and a representative of the Ministry of Social Development.

**Section 77: Offices and Appointments.**

164. This section provides for the Governor to constitute offices and make appointments to them during Her Majesty’s pleasure. During the review process no representations were received from the public and in our view the section does not require any amendment, other than for its application to be changed to the Deputy Governor in keeping with the recommendations made above.

**Section 78: Discipline.**

165. This section confers on the Governor the widest power for cause shown to his satisfaction to dismiss any person holding a public office including requiring him to retire. In accordance with the recommendations made earlier, the Commission is of the view that this section is arbitrary and inappropriate at this time in Anguilla’s constitutional history. Matters of discipline belong in the hands of a Public Service Commission with full executive powers and with a right of appeal. The Commission **recommends** that this section be amended to provide that matters of discipline are the province of the PSC. The Act<sup>40</sup> will need to be amended to make full provision for the Commission to carry out this function. The Deputy Governor will then act on the advice of the PSC.

**Section 79: Chief Auditor.**

166. This section provides for an independent Chief Auditor who reports to the Assembly and who is not subject to the direction or control of any other person or authority. During the review process no representations were received from the public and in our view the section does not require any amendment.

**Section 80: Belonger Status.**

167. Sub-section (1) provides for there to be a Belonger Commission the composition and functions of which are to be prescribed by a law. The

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<sup>40</sup> The Public Service Commission Act, Chapter P165 of the Revised Statutes of Anguilla.

relevant law is the Belonger Commission Act passed by the House of Assembly.

168. **Anguillian Status.** There has been much discussion about the use of the word “Belonger”. It is not an Anguillian term. A majority of persons find it objectionable. The word used in Anguilla to describe persons who belong to Anguilla is “Anguillian.” The Commission **recommends** that the term “Belonger” be replaced by the term “Anguillian”. The Belonger Commission will need to be renamed the “Anguillian Status Commission” (ASC).
169. **Who is an Anguillian.** The majority of persons making representations to the Commission urged that there be only one class of Anguillian. A small minority were of the view that the word “Anguillian” should be retained in law and in practice for those Belongers who have some specially high connection with the island by both birth and heritage, those who might be called “indigenous Anguillians”. They would exclude from the term “Anguillian”, eg, the foreign-born child of Anguillian parents. This person would be a “Belonger” only. Only someone born in Anguilla of Anguillian parents would be an Anguillian. The majority have urged that the shades of “Anguillianness” are unlimited and incalculable. There is the person born in Anguilla of two Anguilla-born parents. There is the person born in Anguilla to one Anguilla-born parent and one foreigner. The list of degrees of Anguillianness would go on forever. Which is to come first and which last in purity of Anguillianness would be a matter of much dispute. It would also be a matter that would cause much offence and stimulate xenophobic tendencies that are already glowing under the horizon. Anguillians would be divided up into categories of more or less degrees of Anguillianness. The Commissioners **recommend** that there be no different grades of “Anguillianness”. The term Belonger should be removed from the Anguilla Constitution and a new Anguillian status be clearly and fairly defined.
170. **The Present Belonger Qualifications.** Section 80(2) sets out the present qualifications for being a Belonger. One of the qualifications is to be a British Overseas Territories Citizen (BOTC) born in Anguilla. So that, for example, if an Antiguan couple have a baby in Anguilla, that baby is not an Anguillian Belonger because it does not qualify as a BOTC under the **British Nationality Acts** (BNA). However, if a BOTC from the Turks & Caicos Islands happens to have a baby in Anguilla, that baby is a Belonger of Anguilla. A Turks & Caicos citizen is as much a foreigner to Anguilla as is an Antiguan citizen. But, Belonger status has been tied to the provisions of the BNA. Representations have been made to the Commission that the British Parliament has done all the overseas territories a disservice by lumping us all together and calling us BOTCs without differentiation. The BNA does not make any distinction between

persons from different territories. This offends against the individuality and uniqueness of each territory, its culture and heritage. Our separateness is not recognised and respected.

171. **Role of the British Parliament.** It has been pointed out to the Commission that the BNA can be amended at any time by the British Parliament. Any amendment and any interpretation given to the BNA provisions would either expressly or by implication affect the interpretation of our Belonger provisions. The great majority of Anguillians making representations to the Commission consider this unreasonable and undesirable.
172. **Naturalisation.** Representations have also been received by the Commission concerning the current provision which allows for persons to be naturalized as BOTCs in Anguilla and thereby to become Belongers of Anguilla. If this anomaly is allowed to continue all our efforts to preserve Anguilla and our Anguillian heritage through some of the current Belonger provisions and the Anguillian status provisions we seek now to implement, will be for naught. The most glaring example of such misused laws is the Immigration and Passport Act and the granting of permanent residence to persons who have recently come to the island. In the representations made to the Commission, the majority view was that making Belonger status a consequence of naturalization in Anguilla is putting the cart before the horse. Rather, people settling on the island must first become a Belonger before they can be considered to have met the immigration requirement for a grant of naturalization as a BOTC. This means that all existing laws that allow persons who are not Belongers to be naturalized in Anguilla must be amended, and the Commission so **recommends**.
173. **British Nationality Acts.** By far the great majority of persons consulted desire that the BNA provisions be severed from the Belonger provisions of our Constitution, and the Commission so **recommends**.
174. **Recommended New Qualifications.** In keeping with the above, it is the overriding view of the people of Anguilla, and the Commission **recommends** that all the Belonger provisions be amended and that following persons be regarded as Anguillians:
  - (1) **A person born or adopted in or outside of Anguilla with a parent or grandparent who was born or adopted in Anguilla and who is regarded as being Anguillian by virtue of this or any previous Constitution.** It is the belief of the people of Anguilla that Belonger status should not be granted solely on birth in Anguilla, but must be based on heritage. This is particularly important for the preservation of our indigenous status as we are a country with a growing immigrant population.

- (2) **A person with a great-grandparent who was born in Anguilla and who is regarded as being Anguillian by virtue of this or any previous Constitution, provided that that person has been living (ie, physically present) in Anguilla for a continuous period of 5 years and his/her absences from Anguilla do not exceed a total of ninety days in each of those years, save for good and sufficient cause. Such a person must apply to the ASC for a grant of Anguillian status.** The people of Anguilla hold the view that we must be careful of conveying Anguillian status to persons who are descendants of Anguillians but whose connection to Anguilla is tenuous. It is the view of the majority that such persons must reestablish their connection to Anguilla by satisfying a residence requirement.
- (3) **A person who has been living in Anguilla for a continuous period of 20 years and whose absences from Anguilla for each of those years do not exceed 90 days save for good and sufficient cause and his or her minor children born in Anguilla. Such a person must apply to the ASC for a grant of Anguillian status.** The majority view is that there should be no requirement that a person be domiciled in Anguilla as this is almost impossible to determine objectively. However the overriding view is that persons must establish their commitment to Anguilla by satisfying a longer residence requirement than established under the 1990 Belonger provisions. The general public is also of the view that the current practice of the Belonger Commission in deeming six months and one day to be a year, must cease.
- (4) **A person who is married to an Anguillian for a period of not less than 7 years. Such a person must apply to the ASC for a grant of Anguillian status.** The people of Anguilla hold the view that Anguillian status on the basis of marriage should be obtained only by way of a grant by the ASC rather than being automatic. It was also the overwhelming view that the number of years of marriage which qualifies a person for Anguillian status on the basis of marriage must increase from the 3 or 5 years provided for in the current Belonger provisions. Although we cannot eliminate marriages of convenience, it is the view of many that all efforts must be made to discourage them.
- (5) **The minor child of a person who has been granted Anguillian status by the ASC on the basis of 20 years residence or marriage where the minor child was born overseas, provided that child has been living (ie, physically present) in Anguilla**

**for a continuous period of 3 years prior to the application and during each of those years his/her absences from Anguilla do not exceed 90 days, save for good and sufficient cause. An application should be made to the ASC on behalf of the minor child for a grant of Anguillian Status.** This recommendation recognises that when persons establish their commitment to Anguilla, have adopted Anguilla as their home and are granted Anguillian status, their children should not be discriminated against and should similarly be accorded Anguillian status.

- (6) A person who is born in Anguilla (and who is not regarded as an Anguillian as provided for above) and who has lived in Anguilla for the first 12 years of his/her life and whose absences from Anguilla during each of those years do not exceed 90 days save for good and sufficient cause. Such a person must apply to the ASC for a grant of Anguillian status.** Many persons voiced the opinion that all persons born in Anguilla should be Anguillians. However, being mindful of the myriad problems that could face a small nation with a growing immigrant population if birth alone in Anguilla entitled a person to Anguillian status, it is the view of the populace that if a person born in Anguilla is not an Anguillian, that person should satisfy a period of residence (shorter than that of persons who have emigrated to Anguilla) and apply to the ASC for a grant of Anguillian status.

175. **Loss of Anguillian Status.** The view has also been expressed by some Anguillians that where persons are granted Anguillian status by the ASC, provision must be made for such persons to lose their status if they are convicted of an indictable offence, and the Commission so **recommends**.
176. **Consequential Amendments to the Constitution.** As a result of the above proposals the Commission **recommends** that amendment will also have to be made to other provisions of the Constitution so as to remove the references to “BDTC” and replace same with the term “Anguillian”. By way of example the current section 43 which deals with qualification of voters would have to be amended.
177. **Consequential Amendments to Legislation.** The Commission also **recommends** that all legislation which uses the term “Belonger” as opposed to “Anguillian” would also have to be amended.
178. **Identity Cards.** Once the new Anguillian status provisions come into force, there will be persons who become naturalised in Anguilla and who may hold British passports issued in Anguilla, but who will not automatically be Anguillians. It will become increasingly important to take steps to recognise who is and who is not an Anguillian. The Commission



**recommends** that in due course provision be made for every Anguillian to hold a document identifying them as such.

179. **National Security Council:** The Governor has recently announced the appointment of a National Security Council (NSC) with advisory powers. The Commission **recommends** that the NSC be established under the Constitution and be given executive responsibility, not merely advisory functions. It should be made responsible for all matters of policy and oversight relating to internal security, including the police force.
180. **Police Service Commission.** The Commission has earlier<sup>41</sup> recommended that a Police Service Commission be established under the Constitution. It should be responsible for hiring, promotions and disciplinary issues within the police force. The Commissioner of Police should act on the advice of the Police Service Commission in hiring non-Gazetted police officers. The Governor should act on its advice in hiring Gazetted police officers. There may need to be consequential amendments to the **Police Act**<sup>42</sup>.
181. **Complaints Commissioner.** Anguilla has no Complaints Commissioner or Ombudsman. The only remedy for administrative abuse at present is an action for damages in the High Court. High Court proceedings are not only expensive but are often not the best remedy for improper conduct on the part of a public servant or government department. Representations have been made to the Commission that it is time that such relief be provided to citizens who have a complaint of oppressive or unfair treatment by any government officer. The Commission is satisfied that it is appropriate for Anguilla to have an Ombudsman at this time. The Commission **recommends** that there be provision in the Constitution for the office of Ombudsman, to report to the Assembly and to be regulated by an appropriate law.
182. **Human Rights Commission.** Several persons have made representations to the effect that the average Anguillian can never afford to go to the High Court to secure his fundamental rights. The cost of an application in the High Court is simply exorbitant. It has been pointed out that many Commonwealth countries have a Commission established by Parliament with the duty and responsibility to take valid complaints of infringement of a person's fundamental rights before the High Court for relief. The Commission **recommends** the placing in the Constitution of provision for a Human Rights Commission to be funded by the House of Assembly and to be governed by an Act.

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<sup>41</sup> At paragraph 63.

<sup>42</sup> The Anguilla Police Act, Chapter A70 of the Revised Statutes of Anguilla.



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## APPENDIX 1

### COMMISSION'S TERMS OF REFERENCE

#### 1. Purpose

To conduct a review of the Anguilla Constitution Order 1982, building on the work done by the Constitutional and Electoral Reform Committee, in order to make recommendations which have the widest possible support in Anguilla for Anguilla's continued constitutional advancement and good governance.

#### 2. Terms of Reference

a) To achieve its purpose, the Commission will consider inter alia:

- Issues of belongingship, including the establishment and protection of rights and privileges of indigenous Anguillians.
- Issues of qualification to and composition of the House of Assembly and the manner in which members are elected and appointed to that body, including revision on the law on elections.
- Areas in which the powers of the Governor as expressed in the Constitution can be modernised to reflect local aspirations.
- The possibility of updating and modernising the Fundamental Freedoms Chapter of the Constitution (Chapter I).
- All material documented by the Constitutional and Electoral Reform Committee in 2001-2004, including all papers presented at the Consultative Forum and all minutes available recording the town hall meetings and the telephone survey.

(b) The Commission may co-opt any person or persons from time to time as they deem appropriate for elucidating their discussions and debate on any relevant issue.

(c) The Commission may consult outside experts as they deemed necessary.

(d) Public hearings will be held when the Commission is prepared to recommend options for change and reform. The experience of the former committee demonstrates clearly that without clear

recommendations for change, the input of the public will not be as focused as it should and debate on the issues will tend to be circuitous. It is preferable that the Commission identify and explain a specific option or options for reform and thereafter put it to the public for debate and discussion. It is important nevertheless that the Commission should seek to stimulate the widest possible public debate and, if possible, a broad level of consensus for any recommendations that are made. The Commission should not feel in any way restricted, however, from making any recommendation that it so wishes. The Commission Chairman should seek to gain full consensus amongst members of the Commission to the Commission's report but this should not preclude the possibility of minority recommendations or the report explaining the range of views on any given issue.

- (e) The Commission should aim to present its report to Executive Council within six months of its appointment. The intention would be that the Commission's recommendations would then be discussed in the House of Assembly before being transmitted to the UK Government with any other relevant papers or recommendations for discussion and, if appropriate, the subsequent negotiation of a revised Constitution with the UK Government.

## APPENDIX 2

### THE 1982 CONSTITUTION

#### ANGUILLA

#### THE ANGUILLA CONSTITUTION ORDER 1982

*Made*..... 10th March 1982

*Coming into Operation* ..... 1st April 1982

At the Court at Buckingham Palace, the 10th day of March 1982

Present, The Queen's Most Excellent Majesty in Council

Her Majesty, by virtue of the powers conferred upon Her by section 1(2) of the Anguilla Act 19801 and sections 6(1) and 17(4) of the West Indies Act 1967, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

#### **Citation and commencement**

1. (1) This Order may be cited as the Anguilla Constitution Order 1982.

(2) This Order shall come into operation on 1st April 1982.

#### **Constitution of Anguilla and revocation**

2. (1) The Schedule to this Order shall have effect as the Constitution of Anguilla as from the commencement of this Order; and the Anguilla (Constitution) Order 19763 is revoked with effect from such commencement.

(2) The Schedule to this Order may be cited as the Constitution of Anguilla and in sections 4, 5, 6, 7 and 8 of this Order it is referred to as 'the Constitution'.

(3) References in any law made before the commencement of this Order to the Anguilla (Administration) Order 1971, to the Constitution of Anguilla established by the Anguilla (Constitution) Order 1976 (hereinafter referred to as 'the former Constitution') or to any particular provision thereof shall be construed, in relation to any period beginning at or after the commencement of this Order, as references to the Constitution or, as the case may be, to the corresponding provision thereof.

#### **Administration of justice**

3. (1) and (2)

(3) The reference in section 15(1)(c) of the Constitution to the High Court and Court of Appeal shall be construed as including a reference to the Supreme Court established by the Windward Islands and Leeward Islands (Courts) Order

in Council 1959 and the British Caribbean Court of Appeal established by the British Caribbean Court of Appeal Order in Council 1962.

### **Citizenship**

#### **4. (1) and (2)**

(3) If a person who was born in St. Christopher or in Nevis before 19th December 1980 is ordinarily resident in Anguilla, having been so resident since that date, he shall be treated for the purposes of section 80(2) of the Constitution as if he had been born in Anguilla.

(4) In the case of persons who, while resident in St. Christopher or in Nevis, were registered as citizens of the United Kingdom and Colonies before 19th December 1980 or naturalised as such before that date or naturalised as British subjects before 1st January 1949—

(a) any such person shall be regarded as having been so registered or naturalised while resident in Anguilla for the purposes of subsection 2(a)(v) of section 80 of the Constitution; and

(b) any such person who is ordinarily resident in Anguilla, having been so resident since 19th December 1980, shall be regarded likewise for the purposes of subsection 2(a)(vi) of that section.

### **Existing offices and authorities**

**5. (1)** Subject to the provisions of this section, offices and authorities existing immediately before the commencement of this Order shall after such commencement, so far as consistent with the provisions of the Constitution, continue as if they had been established by or under the Constitution; and any person who immediately before such commencement is holding or acting in any such office or is a member of any such authority shall after such commencement continue to hold or act in that office or to be such a member as if he had been appointed thereto or as the case may be elected as such in accordance with the Constitution and had made any oath thereby required.

(2) The provisions of this section shall be without prejudice to any powers conferred by or under the Constitution upon any person or authority to make provision for any matter, including (but without prejudice to the generality of the foregoing words) the establishment and abolition of offices, courts of law and authorities and the appointment, election or selection of persons to hold or act in any office or to be members of any court or authority and their removal from office.

### **Existing laws**

**6. (1)** All Acts, Ordinances, rules, regulations, orders and other instruments made under or having effect by virtue of the former Constitution and having effect as part of the law of Anguilla immediately before the commencement of this Order



shall after such commencement have effect as if they had been made under or by virtue of this Constitution.

(2) The existing laws shall be construed with such modifications, adaptations, qualifications and exceptions as are necessary to bring them into conformity with the Constitution and the Supreme Court Order, as amended by section 3(1) of this Order.

(3) In this section the expression “existing laws” means laws and instruments (other than Acts of Parliament and instruments made thereunder) having effect as part of the law of Anguilla immediately before the commencement of this Order.

### **Inhuman treatment**

7. Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of section 6 of the Constitution to the extent that the law in question authorises the infliction of any description of punishment that was lawful in Anguilla immediately before the commencement of this Order.

### **Dissolution of Assembly**

8. For the purposes of section 63(3) of the Constitution the Assembly shall be regarded as having held its first meeting after a general election on 22nd June 1981.

### **Power reserved to Her Majesty**

9. Her Majesty reserves to Herself power, with the advice of Her Privy Council, to make laws for the peace, order and good government of Anguilla.

*N. E. Leigh,*  
Clerk of the Privy Council.

## **THE SCHEDULE TO THE ORDER THE CONSTITUTION OF ANGUILLA**

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

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

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

- (a) life, liberty, security of the person, the enjoyment of property and the protection of the law;
- (b) freedom of conscience, of expression and of peaceful assembly and association; and
- (c) respect for his private and family life, the subsequent provisions of this Chapter shall have effect for the purpose of affording protection to the aforesaid rights and freedoms, subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by an individual does not prejudice the rights and freedoms of others or the public interest.

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

2. (1) No person shall be deprived of his life intentionally save in execution of the sentence of a court in respect of a criminal offence under the law of Anguilla of which he has been convicted.

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

- (a) for the defence of any person from violence or for the defence of property;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) for the purpose of suppressing a riot, insurrection or mutiny; or
- (d) in order lawfully to prevent the commission by that person of a criminal offence, or if he dies as the result of a lawful act of war.

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

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

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

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

(3) Any person who is arrested or detained—

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

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

(4) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefor from that person or from any other person or authority on whose behalf that person was acting.

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

(6) For the purposes of subsection (1)(b) of this section a person charged before a court with a criminal offence in respect of whom a special verdict has been returned that he was guilty of the act or omission charged but was insane when he did the act or made the omission shall be regarded as a person who has been convicted of an offence and the detention of a person in consequence of such a verdict shall be regarded as detention in execution of the order of a court.

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

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

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

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

(a) any labour required in consequence of the sentence or order of a court;

(b) labour required of any person while he is lawfully detained that, though not required in consequence of the sentence or order of a court, is reasonably necessary in the interests of hygiene or for the maintenance of the place at which he is detained;

(c) any labour required of a member of a disciplined force in pursuance of his duties as such or, in the case of a person who has conscientious objections to service as a member of a naval, military or air force, any labour that that person is required by law to perform in place of such service;

(d) any labour required during any period of public emergency or in the event of any other emergency or calamity that threatens the life and well-being of the community, to the extent that the requiring of such labour is reasonably justifiable in the circumstances of any situation arising or existing during that period or as a result of that other emergency or calamity, for the purpose of dealing with that situation.

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

**5.** (1) No person shall be deprived of his freedom of movement, and, for the purposes of this section the said freedom means the right to move freely throughout Anguilla, the right to reside in any part of Anguilla, the right to enter Anguilla, the right to leave Anguilla and immunity from expulsion from Anguilla.

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

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

(a) for the imposition of restrictions on the movement or residence within Anguilla of any person or on any person's right to leave Anguilla that are reasonably required in the interests of defence, public safety or public order;

(b) for the imposition of restrictions on the movement or residence within Anguilla or on the right to leave Anguilla of persons generally or any class of persons in the interests of defence, public safety, public order, public morality or public health and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society;

(c) for the imposition of restrictions on the movement or residence within Anguilla of any person who does not belong to Anguilla or the exclusion or expulsion from Anguilla of any such person;

(d) for the imposition of restrictions on the acquisition or use by any person of land or other property in Anguilla;

(e) for the imposition of restrictions on the movement or residence within Anguilla of public officers, or on the right of public officers to leave Anguilla;

(f) for the removal of a person from Anguilla to be tried or punished in some other country for a criminal offence under the law of that other country or to undergo imprisonment in that other country in execution of the sentence of a court in respect of a criminal offence under the law of Anguilla of which he has been convicted; or

(g) for the imposition of restrictions on the right of any person to leave Anguilla that are reasonably required in order to secure the fulfilment of any obligations imposed on that person by law and except so far as that

provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

(4) If any person whose freedom of movement has been restricted by virtue only of such a provision as is referred to in subsection (3)(a) of this section so requests at any time during the period of that restriction not earlier than six months after the restriction was imposed or six months after he last made such a request during that period, his case shall be reviewed by an independent and impartial tribunal established by law and presided over by a person appointed by the Chief Justice from among persons who hold the office of magistrate in Anguilla or who are entitled to practise or to be admitted to practise in Anguilla as barristers.

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

#### **Protection from inhuman treatment**

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

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

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

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

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

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



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

(3) Nothing in this section shall be construed as affecting the making or operation of any law so far as it provides for the orderly marketing or production or growth or extraction of any agricultural product or mineral or any article or thing prepared for market or manufactured therefor<sup>11</sup> 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 may have in or over property which has been compulsorily taken possession of or compulsorily acquired as prescribed and determined in accordance with the provisions of the law by or under which the property or such right or interest has been compulsorily taken possession of or compulsorily acquired.

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

8. (1) Except with his own consent, no person shall be subjected to the search of his person or his property or the entry by others on his premises.

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

(a) that is reasonably required in the interests of defence, public safety, public order, public morality, public health, public revenue, town and country planning or the development and utilisation of any property in such a manner as to promote the public benefit;

(b) that authorises an officer or agent of the Government of Anguilla, a local government authority or a body corporate established by law for public purposes to enter on the premises of any person in order to inspect those premises or anything thereon for the purpose of any tax, rate or due or in order to carry out work connected with any property that is lawfully on those premises and that belongs to that Government, authority or body corporate, as the case may be;

(c) that is reasonably required for the purpose of preventing or detecting crime; 11 The word “therefor” is indicated as “therefore” in the original.

(d) that is reasonably required for the purpose of protecting the rights or freedoms of other persons; or

(e) that authorises, for the purpose of enforcing the judgment or order of a court in any civil proceedings, the search of any person or property by order of a court or entry upon any premises by such order, and except so far as that provision or, as the case may be, anything done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

### **Provisions to secure protection of law**

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

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

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

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

- (a) in interlocutory civil proceedings; or
- (b) in appeal proceedings under any law relating to income tax; or
- (c) to such extent as the court or other authority—
  - (i) may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice; or
  - (ii) may be empowered or required by law to do so in the interests of defence, public safety, public order, public morality, the welfare of persons under the age of eighteen years or the protection of the private lives of persons concerned in the proceedings.

(5) Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved or has pleaded guilty:  
Provided that nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this subsection to the extent that the law in question imposes upon any person charged as aforesaid the burden of proving particular facts.

- (6) Every person who is charged with a criminal offence—
- (a) shall be informed orally and in writing as soon as reasonably practicable, in a language which he understands, of the nature of the offence charged;
  - (b) shall be given adequate time and facilities for the preparation of his defence;
  - (c) shall be permitted to defend himself in person or, at his own expense, by a legal representative of his own choice;
  - (d) shall be afforded facilities to examine in person or by his legal representative the witnesses called by the prosecution before any court and to obtain the attendance of witnesses, subject to the payment of their reasonable expenses, and carry out the examination of such witnesses to testify on his behalf before the court on the same condition as those applying to witnesses called by the prosecution; and
  - (e) shall be permitted to have without payment the assistance of an interpreter if he cannot understand the English language.

(7) 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.

(8) No person who shows that he has been tried by any competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for other criminal offence of which he could have been convicted at the trial for that offence save upon the order of a superior court made in the course of appeal proceedings relating to the conviction or acquittal; and no person shall be

tried for a criminal offence if he shows that he has been pardoned for that offence:

Provided that nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this subsection to the extent that the law in question authorises any court to try a member of a disciplined force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under the disciplinary law of that force; but any court so trying such a member and convicting him shall in sentencing him to any punishment take into account any punishment awarded him under that disciplinary law.

(9) When a person is tried for any criminal offence, the accused person or any person authorised by him in that behalf shall, if he so requires and subject to payment of such reasonable fee as may be prescribed by law, be given within a reasonable time after judgment a copy for the use of the accused person of any record of the proceedings made by or on behalf of the court.

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

(11) 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 (5) of this section shall not apply in relation to his trial for a criminal offence under the law regulating the discipline of persons held in such detention.

(12) In this section "criminal offence" means a criminal offence under the law of Anguilla.

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

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

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

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

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

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

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

(b) for the purpose of protecting the rights and freedoms of other persons, including the right to observe and practise any religion without the unsolicited intervention of members of any other religion; or

(c) for the purpose of regulating educational institutions in the interests of persons who receive or may receive instruction in them, and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

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

### **Protection of freedom of expression**

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

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

(a) that is reasonably required in the interests of defence, public safety, public order, public morality or public health;

(b) that is reasonably required 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

(c) that imposes restrictions upon public officers:

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

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

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

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

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

(a) that is reasonably required—

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

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

(b) that imposes restrictions upon public officers:

Provided that:—

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

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

**Protection from discrimination on the grounds of race, etc.**

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

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

(3) In this section, the expression “discriminatory” means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, place of origin, political opinions, colour, creed or sex whereby persons of one such description are subjected to disabilities or

restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.

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

- (a) with respect to persons who do not belong to Anguilla;
- (b) for the application, in the case of persons of any such description as is mentioned in subsection (3) of this section (or of persons connected with such persons), of the law with respect to adoption, marriage, divorce, burial, devolution of property on death or other like matters which is the personal law of persons of that description; or
- (c) for the imposition of taxation or appropriation of revenue by the Government of Anguilla or any local authority or body for local purposes.

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

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

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

- (a) whereby persons of any such description as is mentioned in subsection (3) of this section may be subjected to any restriction on the rights and freedoms guaranteed by sections 5, 8, 10, 11 and 12 of this Constitution, being such a restriction as is authorised by paragraph (a), (b) or (g) of subsection (3) of section 5, subsection (2) of section 8, subsection (5) of section 10, subsection (2) of section 11, or subsection (3) of section 12, as the case may be; or
- (b) which is reasonably justifiable in a democratic society for the protection or well-being of women.

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

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

**14.** Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of section 3 or section 13 of this

Constitution to the extent that the law authorises the taking during any period of public emergency of measures that are reasonably justifiable for dealing with the situation that exists in Anguilla during that period.

### **Protection of persons detained under emergency laws**

**15.** (1) When a person is detained by virtue of any such law as is referred to in section 14 of this Constitution the following provisions shall apply, that is to say—

(a) he shall, as soon as reasonably practicable and in any case not more than four days after the commencement of his detention, be furnished with a statement in writing in a language that he understands specifying in detail the grounds upon which he is detained;

(b) not more than fourteen days after the commencement of his detention, a notification shall be published in the Official Gazette stating that he has been detained and giving particulars of the provision of law under which his detention is authorised;

(c) not more than one month after the commencement of his detention and thereafter during his detention at intervals of not more than six months, his case shall be reviewed by an independent and impartial tribunal established by law and presided over by a person appointed by the Chief Justice from among persons who are or have been judges of the High Court or the Court of Appeal or are qualified for appointment as such judges;

(d) he shall be afforded reasonable facilities to consult a legal representative of his own choice who shall be permitted to make representations to the tribunal appointed for the review of the case of the detained person; and

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

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

(3) Nothing contained in subsection (1)(d) or subsection (1)(e) of this section shall be construed as entitling a person to legal representation at public expense.

### **Enforcement of protective provisions**

**16.** (1) If any person alleges that any of the provisions of sections 2 to 15 (inclusive) of this Constitution has been, or is being, contravened in relation to him (or, in the case of a person who is detained, if any other person alleges such a contravention in relation to the detained person), then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the High Court for redress.



(2) The High Court shall have original jurisdiction to hear and determine any application made by any person in pursuance of subsection (1) of this section and may 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 2 to 15 (inclusive) to the protection of which the person concerned is entitled:

Provided that the High Court may decline to exercise its powers under this subsection if 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.

(3) If in any proceedings in any court (other than the Court of Appeal, the High Court or a court martial) any question arises as to the contravention in any of the provisions of sections 2 to 15 (inclusive) of this Constitution, the person presiding in that court may, and shall if any party to the proceedings so requests, refer the question to the High Court unless, in his opinion, the raising of the question is merely frivolous or vexatious.

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

(5) 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.

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

### **Declaration of emergency**

**17.** (1) The Governor may, by Proclamation which shall be published in the Official Gazette, declare that a state of emergency exists for the purposes of this Chapter.

(2) A declaration of emergency may at any time be revoked by the Governor, by Proclamation which shall be published in the Official Gazette, and, unless sooner revoked, shall, without prejudice to the making of a further declaration in like manner, expire at the expiration of ninety days from the date on which it was made.

### **Interpretation and savings**

**18.** (1) In this Chapter, unless the context otherwise requires—  
“contravention”, in relation to any requirement, includes a failure to comply with that requirement, and cognate expressions shall be construed accordingly;  
“court” means any court of law having jurisdiction in Anguilla other than a court established by a disciplinary law, and includes Her Majesty in Council and in section 2 of this Constitution a court established by a disciplinary law;  
“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 Force; or
- (c) a prison service;

“legal representative” means a person entitled to be in or to enter Anguilla and entitled to practise as a barrister in Anguilla or, except in relation to proceedings before a court in which a solicitor has no right of audience, so entitled to practise as a solicitor; and

“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.

(2) In this Chapter “a period of public emergency” means any period during which—

- (a) Her Majesty is at war; or
- (b) a declaration of emergency is in force under section 17 of this Constitution.

(3) 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 this Chapter other than sections 2, 4 and 5 of this Constitution.

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

## **CHAPTER II THE GOVERNOR**

### **The Governor**

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

(2) For the purpose of administering the Government of Anguilla, the Governor shall have such powers and duties as are conferred or imposed on him by this Constitution or any other law and such other powers as Her Majesty may from time to time be pleased to assign to him.

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

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

### **Office of Deputy Governor**

**19A.** (1) There shall be a Deputy Governor who shall be appointed by the Governor in pursuance of instructions given by Her Majesty through a Secretary of State and shall hold office during Her Majesty's pleasure.

(2) Subject to the provisions of subsection (3) of this section, the Deputy Governor shall assist the Governor in the exercise of his functions relating to matters for which he is responsible under this Constitution.

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

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

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

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

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

(7) If the office of Deputy Governor is vacant or the person holding that office is acting in the office of Governor under section 20 of this Constitution or is for any other reason unable to perform the functions of the office of Deputy Governor, then the Governor, acting in his discretion, may appoint a person to act as Deputy Governor and any such person shall continue to act until his appointment is revoked by the Governor, acting in his discretion.

### **Acting Governor**

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

(2) Before assuming the functions of the office of Governor, the person designated or, as the case may be, the Deputy Governor shall make the oaths directed by section 19(4) of this Constitution to be made by the Governor.

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

(4) The Governor shall not, for the purposes of this section, be regarded as absent from Anguilla or as unable to perform the functions of his office—  
(a) at any time when there is a subsisting appointment of a deputy under the next following section; or  
(b) by reason of absence from Anguilla for a period not exceeding forty-eight hours.

### **Governor's deputy**

**21.** (1) Whenever the Governor—  
(a) has occasion to be absent from Anguilla for a period which he has reason to believe will be of short duration; or  
(b) is suffering from illness which he has reason to believe will be of short duration,

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

(2) The powers and authority of the Governor shall not be abridged, altered or in any way affected by the appointment of a deputy under this section, and a deputy shall conform to and observe all instructions that the Governor, acting in his

discretion, may from time to time address to him; but no court shall enquire whether or not he has complied with any such instructions.

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

### **CHAPTER III THE EXECUTIVE**

#### **Executive authority for Anguilla**

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

(2) Subject to the provisions of this Constitution, the executive authority of Anguilla may be exercised on behalf of Her Majesty by the Governor either directly or through officers subordinate to him, but nothing in this subsection shall operate so as to prejudice the provisions of any laws for the time being in force in Anguilla whereby functions are, or may be, conferred on persons or authorities other than the Governor.

#### **Executive Council**

**23.** There shall be an Executive Council in and for Anguilla which shall consist of the Chief Minister, not more than three other Ministers and two ex-officio members, namely, the Deputy Governor and Attorney-General.

#### **Appointment of Ministers**

**24.** (1) The Governor, acting in his discretion, shall appoint as the Chief Minister the elected member of the Assembly who, in his judgment, is likely to command the support of a majority of the elected members of the Assembly.

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

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

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

#### **Appointment of Parliamentary Secretary**

**24A.** (1) The Governor, acting in accordance with the advice of the Chief Minister, may appoint a Parliamentary Secretary from among the elected or nominated members of the Assembly.

(2) The provisions of sections 24(3) and (4), 25(3) and (4) and 30 of this Constitution shall apply in relation to the Parliamentary Secretary as they apply in relation to a Minister other than the Chief Minister.

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

**25.** (1) If a motion that the Assembly should declare a lack of confidence in the Government of Anguilla receives in the Assembly the affirmative votes of two-thirds of all the elected members thereof the Governor shall dissolve the Assembly and shall act in his discretion in appointing the date for the ensuing general election under section 64 of this Constitution.

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

(3) Any Minister shall vacate his office if—

- (a) he ceases to be a member of the Assembly for any reason other than a dissolution;
- (b) he is not an elected member of the Assembly when it first meets after a general election;
- (c) he is required under the provisions of section 39 of this Constitution to cease to perform his functions as a member of the Assembly; or
- (d) he resigns it by writing under his hand addressed to the Governor.

(4) A Minister other than the Chief Minister shall also vacate his office if—

- (a) the Chief Minister vacates his office; or
- (b) his appointment is revoked by the Governor acting in accordance with the advice of the Chief Minister, by instrument under the public seal.

### **Performance of functions of Chief Minister in certain events**

**26.** (1) If the Chief Minister is unable, by reason of his illness or absence from Anguilla, to perform the functions of his office, the Governor may, by instrument under the public seal, authorise any other Minister to perform the functions conferred on the Chief Minister by this Constitution (other than the functions conferred upon him by subsection (3) of this section).

(2) The Governor may, by instrument under the public seal, revoke any authority given under this section.

(3) The powers conferred upon the Governor by this section shall be exercised by him acting in his discretion if, in his judgement, it is impracticable to obtain the Chief Minister's advice owing to his illness or absence, and in any other case shall be exercised in accordance with the advice of the Chief Minister.

### **Assignment of responsibilities to Ministers**

**27.** (1) The Governor, acting in accordance with the advice of the Chief Minister, may, by directions in writing, assign to any Minister responsibility for the conduct (subject to the provisions of this Constitution and of any other law) of any business of the Government of Anguilla including responsibility for the administration of any department of government:

Provided that a Minister shall not be charged with responsibility under this section for any of the matters mentioned in subsection (2)(a) and (b) of the next following section.

(2) The Governor, acting in his discretion, may at any time call for any official papers or seek any official information or advice available to a Minister with respect to a matter for which that Minister is responsible under this section.

### **Governor to consult Council**

**28.** (1) Subject to the provisions of this section and the next following section, the Governor shall consult with the Executive Council in the formulation of policy and in the exercise of all powers conferred upon him 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 Council.

(2) The Governor shall not be obliged to consult with nor act upon the advice of the Executive Council with respect to the following—

- (a) any matter that in his opinion relates to defence, external affairs, international financial services or any directly related aspect of finance, or internal security, including the police;
- (b) the appointment (including the appointment on promotion or transfer, appointment on contract and appointment to act in an office) of any person to any public office, the suspension, termination of employment, dismissal, or retirement of any public officer or taking of disciplinary action in respect of such an officer, the application to any public officer of the terms or conditions of employment of the public service (including salary scales, allowances, leave, passages or pensions) for which financial provision has been made;
- (c) any power conferred upon him by this Constitution that he is empowered to exercise in his discretion or in pursuance of instructions given to him by Her Majesty;
- (d) any power conferred by any law other than this Constitution that he is empowered or directed, either expressly or by necessary implication, by that or any other law to exercise without consulting the Council;
- (e) any matter in which, in his judgment, the service of Her Majesty would sustain material prejudice thereby;
- (f) where the matter to be decided is in his judgment too unimportant to require the advice of the Council; or
- (g) where the urgency of the matter requires him to act before the Council can be consulted:

Provided that in exercising his powers in relation to—  
(i) the matters referred to in (a) hereof the Governor shall keep the Council informed of any matters that in his judgment may involve the economic or financial interests of Anguilla, and shall consult with the Chief Minister on any matter relating to internal security, including the police;  
(ii) the matters referred to in (g) hereof  
the Governor shall as soon as practicable communicate to the Council the measures which he has adopted and the reasons for those measures.

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

### **Governor's responsibilities**

(4) The Governor shall be responsible for the conduct (subject to the provisions of 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 matters referred to in paragraphs (a) and (b) of subsection (2) of this section:

Provided that the Governor, after consultation with the Chief Minister, may assign to any member of the Executive Council responsibility for the conduct on behalf of the Governor of any business in the House of Assembly with respect to any of those matters.

(5) The Governor, acting in his discretion, may by directions in writing delegate, with the prior approval of a Secretary of State, to the Chief Minister or any other Minister designated by him after consultation with the Chief Minister such responsibility for matters relating to external affairs, international financial services or internal security as the Governor may think fit upon such conditions as he may impose.

(6) Where the Governor, acting in his discretion, determines that the exercise of any function conferred upon any other person or authority (other than the Assembly) would involve or affect any matter referred to in paragraphs (a) and (b) of subsection (2) of this section, he may, acting in his discretion, give directions as to the exercise of that function, and the person or authority concerned shall exercise the function in accordance with those directions.

### **Governor's reserved executive power**

**29.** (1) In any case where the Governor is required by the last foregoing section to consult with the Executive Council, he may act otherwise than in accordance with the advice given him by the Council if in his opinion it would be inexpedient in the interests of public order or public faith to act in accordance with that advice:



Provided that he shall not so act against the advice of the Council without first obtaining the approval of a Secretary of State.

(2) Whenever the Governor acts otherwise than in accordance with the advice given to him by the Executive Council, any member of the Council may require that there be recorded in the minutes the grounds of any advice or opinion which he may have given on the question, and the Governor shall as soon as is practicable forward a copy of the resulting entry in the minutes to a Secretary of State.

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

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

#### **Summoning of persons to Council**

**31.** The Governor may summon any public officer to a meeting of the Executive Council whenever, in his opinion, the business before the Council renders the presence of that officer desirable.

#### **Summoning of Council and transaction of business**

**32.** (1) The Executive Council shall not be summoned except by the authority of the Governor, acting in his discretion:  
Provided that the Governor shall summon the Council if not less than two elected members of the Council so request in writing.

(2) No business shall be transacted at any meeting of the Executive Council unless there are four members present besides the person presiding.

(3) Subject to the provisions of the last foregoing subsection, the Executive Council shall not be disqualified for the transaction of business by reason of any vacancy in the membership of the Council (including any vacancy not filled when the Council is first constituted or is reconstituted at any time) and the validity of the transaction of business in the Council shall not be affected by reason only of the fact that some person who was not entitled to do so took part therein.

#### **Presiding in Council and Secretary**

**33.** (1) The Governor shall, so far as is practicable, attend and preside at meetings of the Executive Council.

(2) In the absence of the Governor there shall preside at any meeting of the Executive Council such member of the Council as the Governor, acting in his discretion, may appoint.

(3) There shall be a Secretary of the Executive Council who shall be appointed by the Governor acting after consultation with the Chief Minister but if at any time he cannot conveniently discharge the functions of Secretary of the Council, those functions shall be discharged by such public officer as may be designated in that behalf by the Governor, acting in his discretion.

### **Attorney-General**

**34.** (1) The Attorney-General shall have power, in any case in which he considers it desirable so to do—

- (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 criminal proceedings instituted, or undertaken by himself or any other person or authority.

(2) The powers of the Attorney-General under the last foregoing subsection may be exercised by him in person or by officers subordinate to him acting under and in accordance with his general or special instructions.

(3) The powers conferred upon the Attorney-General by paragraphs (b) and (c) of subsection (1) of this section shall be vested in him to the exclusion of any other person or authority:

Provided that 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 instituted has been charged before the court.

(4) For the purposes of this section, an appeal from any determination in criminal proceedings before any court, or a case stated or question of law reserved for the purpose of such proceedings, to another court or to Her Majesty in Council shall be deemed to be part of those proceedings.

## **CHAPTER IV THE HOUSE OF ASSEMBLY**

### **House of Assembly**

**35.** (1) There shall be a House of Assembly for Anguilla.

(2) Subject to the provisions of this Constitution, the Assembly shall consist of—

- (a) the Speaker;
- (b) two ex-officio members, namely the Attorney-General and the Deputy Governor;

- (c) not less than seven members elected in the manner provided by law; and
- (d) two nominated members, being persons who belong to Anguilla of the age of twentyone years or upwards, appointed by the Governor by instrument under the public seal in accordance with subsection (3) of this section.

(3) Of the two nominated members, one shall be appointed by the Governor acting in accordance with the advice of the Chief Minister, and the other shall be appointed by the Governor acting after consultation with the Chief Minister and the Leader of the Opposition, if any.

### **Qualifications for elected membership**

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

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

### **Disqualifications for nominated or elected membership**

**37.** (1) No person shall be qualified to be nominated or elected as a member of the Assembly who—

- (a) is, by virtue of his own act, under any acknowledgement of allegiance, obedience or adherence to a foreign power or state;
- (b) is a minister of religion;
- (c) holds or is acting in any office of emolument in the service of the Crown;
- (d) is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law in force in any country;
- (e) is a person certified to be insane or otherwise adjudged to be of unsound mind under any law in force in Anguilla;
- (f) is under sentence of death imposed on him by a court of law in any country or is under a sentence of imprisonment (by whatever name called) exceeding twelve months imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court, provided that the acts constituting the offence for which such sentence was imposed would, if committed in Anguilla, have constituted an offence under the law of Anguilla;<sup>31</sup> or
- (g) is disqualified for membership of the Assembly by any law in force in Anguilla relating to offences connected with elections.

(2) In this section “minister of religion” means any person in holy orders and any other person the functions of whose principal occupation include teaching or preaching in any congregation for religious worship.

(3) For the purposes of paragraph (f) of subsection (1) of this section—  
(a) two or more terms of imprisonment that are required to be served consecutively shall be regarded as a single term of imprisonment for the aggregate period of those terms; and  
(b) no account shall be taken of a sentence of imprisonment imposed as an alternative to, or in default of the payment of, a fine.

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

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

**38.** The seat of a nominated or elected member of the Assembly shall become vacant—

- (a) upon a dissolution of the Assembly;
- (b) if, without prior notice to the Governor, he is absent from three consecutive meetings of the Assembly;
- (c) if he ceases to be a person who belongs to Anguilla;
- (d) if he ceases to be resident in Anguilla;
- (e) if he resigns his seat by writing under his hand addressed to the Governor;
- (f) if any of the circumstances arise that, if he were not a member of the Assembly, would cause him to be disqualified for election thereto by virtue of paragraph (a), (b), (c), (d), (e), or (g) of subsection (1) of the last foregoing section; or
- (g) in the circumstances specified in the next following section.

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

**39.** (1) Subject to the provisions of this section, if a nominated or elected member of the Assembly is sentenced by a court of law in any country to death or to imprisonment (by whatever name called) for a term exceeding twelve months, and 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, he shall forthwith cease to perform his functions as a member of the Assembly, and his seat in the Assembly shall become vacant at the expiration of a period of thirty days thereafter;

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

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

(3) For the purposes of this section—

- (a) where a person is sentenced to two or more terms of imprisonment that are required to be served consecutively account shall be taken only of any of those terms that exceeds twelve months; 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.

### **Temporary members of Assembly**

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

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

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

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

### **Leader of the Opposition**

**40A.** (1) Subject to the provisions of this section, the Governor may appoint a Leader of the Opposition.

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

- (a) the member of the Assembly who in the 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; or
- (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.

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

(4) The office of the Leader of the Opposition shall also become vacant—  
(a) if for any reason other than a dissolution of the Assembly the holder thereof ceases to be a member of the Council, or  
(b) if the holder thereof is appointed as the Chief Minister.

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

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

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

**41.** (1) Any question whether a person has been validly appointed as a nominated or a temporary member of the Assembly, or whether a nominated or a temporary member of the Assembly has vacated his seat therein or is required by virtue of section 39 of this Constitution to cease to perform his functions as a member, shall be determined by the Governor acting in his discretion.

(2) Any question whether a person has been validly elected as a member of the Assembly, or whether an elected member of the Assembly has vacated his seat therein or is required by virtue of section 39 of this Constitution to cease to perform his functions as a member, shall be determined by the High Court, whose decision shall be final and not subject to any appeal.

(3) (a) An application to the High Court for the determination of any question whether a person has been validly elected as a member of the Assembly may be made by—

- (i) a person who voted or had the right to vote at the election to which the application relates;
- (ii) a person claiming to have had the right to be returned at such election;
- (iii) a person alleging himself to have been a candidate at such election; or
- (iv) the Attorney-General.

(b) An application to the High Court for the determination of any question whether an elected member of the Assembly has vacated his seat therein or is required by virtue of section 39 of this Constitution to cease to perform his functions as a member may be made by—

- (i) any elected member of the Assembly; or
- (ii) the Attorney-General.

(c) If any application referred to in paragraph (a) or (b) of this subsection is made by a person other than the Attorney-General, the Attorney-General may intervene and may then appear or be represented in the proceedings.

#### **Penalty for sitting or voting in Assembly when unqualified**

**42.** (1) Any person who sits or votes in the Assembly knowing or having reasonable grounds for knowing that he is not entitled to do so shall be liable to a penalty not exceeding EC\$100.00 for each day upon which he sits or votes.

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

#### **Qualification of voters**

**43.** (1) Subject to the next following subsection a person shall be qualified to be registered as a voter in an electoral district if he is of the age of eighteen years and upwards and—

(a) is a British Dependent Territories citizen born in Anguilla, and is domiciled there at the qualifying date; or

(b) (i) is a person who belongs to Anguilla who has resided in Anguilla for a period of not less than twelve 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 a person who belongs to Anguilla 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 claims to be registered.

(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.

#### **Disqualification of voters**

**44.** (1) No person shall be qualified to be registered as a voter who—

(a) is under sentence of death imposed on him by a court of law in any country or is under a sentence of imprisonment (by whatever name called) exceeding twelve months imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court, provided that the acts constituting the offence for which such

sentence was imposed would, if committed in Anguilla, have constituted an offence under the law of Anguilla;

- (b) is a person certified to be insane or otherwise adjudged to be of unsound mind under any law in force in Anguilla; or
- (c) is disqualified for registration as a voter by any law in force in Anguilla relating to offences connected with elections.

(2) For the purposes of paragraph (a) of the preceding subsection—

- (a) two or more terms of imprisonment that are required to be served consecutively shall be regarded as a single term of imprisonment for the aggregate period of those terms; and
- (b) no account shall be taken of a sentence of imprisonment imposed as an alternative to, or in default of the payment of, a fine.

### **Right to vote at elections**

**45.** (1) Any person who is registered as a voter in an electoral district shall, while so registered, be entitled to vote at any election for that district unless he is prohibited from so voting by any law in force in Anguilla—

- (a) because he is a returning officer; or
- (b) because he 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 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).

### **Laws as to elections**

**46.** Subject to the provisions of 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, that is to say—

- (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;
- (f) the determination of any question whether any person has been validly elected a member of the Assembly or whether the seat of any elected member in the Assembly has become vacant;



(g) the definition and trial of offences connected with elections and the imposition of penalties therefor, including the disqualification for membership of the Assembly, or for registration as a voter or for voting at elections, of any person concerned in any such offence; 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.

## **CHAPTER V POWERS AND PROCEDURE IN HOUSE OF ASSEMBLY**

### **Power to make laws**

**47.** Subject to the provisions of this Constitution, the Governor, with the advice and consent of the Assembly, may make laws for the peace, order and good government of Anguilla.

### **Royal Instructions**

**48.** Subject to the provisions of this Constitution, the Governor and the Assembly shall, in the transaction of business and the making of laws, conform as nearly as may be to the directions contained in any Instructions under Her Majesty's Sign Manual and Signet that may from time to time be addressed to the Governor in that behalf.

### **Rules of procedure**

**49.** Subject to the provisions of this Constitution and of any Instructions under Her Majesty's Sign Manual and Signet, the Assembly may from time to time make, amend and revoke rules of procedure for the regulation and orderly conduct of its own proceedings and the despatch of business, and for the passing, intituling and numbering of Bills for the presentation thereof to the Governor for assent; but no such rules of procedure or amendment or revocation thereof shall have effect until the Governor, acting in his discretion, by writing under his hand approves them.

### **Presiding in Assembly**

**50.** (1) When the Assembly first meets after a general election, or after the office of Speaker has fallen vacant for any reason other than a dissolution of the Assembly, and before it proceeds to the despatch of any other business, the Assembly shall elect a person to be Speaker of the Assembly.

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

(3) When the Assembly first meets after a general election and before it proceeds to the dispatch of any other business except the election of the Speaker, it shall elect a member of the Assembly other than an elected member to be Deputy

Speaker of the Assembly; and if the office of Deputy Speaker falls vacant for any reason other than a dissolution of the Assembly, the Assembly shall, as soon as convenient, elect another such member to that office.

- (4) A person shall vacate the office of Speaker or Deputy Speaker—
- (a) on dissolution of the Assembly;
  - (b) if he resigns his office by written notice to the Governor;
  - (c) if a motion for his removal from office receives in the Assembly the affirmative votes of two-thirds of all the members thereof;
  - (d) if, being a member of the Assembly, he ceases to be a member for any reason other than a dissolution of the Assembly or if, by virtue of section 39 of this Constitution, he is required to cease to perform his functions as a member;
  - (e) in the case of the Speaker—
    - (i) if he becomes a member of the Executive Council;
    - (ii) if, not being a member of the Assembly, any circumstances arise that would cause him to be disqualified for election as a member of the Assembly by virtue of section 37(1) of this Constitution.

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

(6) References in subsection (5) of this section to circumstances in which the Speaker or Deputy Speaker is absent include references to circumstances in which the office of Speaker or Deputy Speaker is vacant.

### **Assembly may transact business notwithstanding vacancies**

**51.** The Assembly shall not be disqualified for the transaction of business by reason of any vacancy in the membership thereof (including any vacancy not filled when the Assembly is first constituted or is reconstituted at any time) and any proceedings therein shall be valid notwithstanding that some person who was not entitled to do so sat or voted in the Assembly or otherwise took part in those proceedings.

### **Quorum**

**52.** (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 rules of procedure of the Assembly, the person presiding at the sitting ascertains that a quorum is still not present, he shall adjourn the Assembly.

(2) For the purposes of this section a quorum shall consist of two-thirds of the members of the Assembly in addition to the person presiding.

## **Voting**

**53.** (1) Save as otherwise provided in this Constitution, all questions proposed for decision in the Assembly shall be determined by a majority of votes of the members present and voting.

(2) The Speaker or other member presiding shall not vote unless on any question the votes are equally divided, in which case he shall have and exercise a casting vote.

## **Summoning of persons to assist Assembly**

**54.** (1) The Speaker or other person presiding may, when in his opinion the business before the Assembly makes it desirable, summon any person to a meeting of the Assembly 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 was a member in the proceedings of the Assembly relating to the matter in respect of which he was summoned, except that he may not vote.

## **Introduction of Bills**

**55.** (1) Subject to the provisions of this Constitution and of the rules of procedure 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 rules of procedure of the Assembly.

(2) Except on the recommendation of the Governor, the Assembly shall not—

- (a) proceed upon any Bill (including any amendment to a Bill) which in the opinion of the person presiding in the Assembly, makes provision for imposing or increasing any tax, for imposing or increasing any charge on the revenues or other funds of Anguilla or for altering any such charge otherwise than by reducing it or for compounding or remitting any debt due to Anguilla;
- (b) proceed upon any motion (including any amendment to a motion) the effect of which, in the opinion of the person presiding in the Assembly, is that provision would be made for any of the purposes aforesaid; or
- (c) receive any petition which, in the opinion of the person presiding in the Assembly, requests that provision be made for any of the purposes aforesaid.

## **Governor's legislative reserved power**

**56.** (1) If the Governor considers that it is expedient in the interests of public order or public faith (which expressions shall, without prejudice to their generality, include the responsibility of Anguilla as a territory within the Commonwealth and all matters pertaining to the creation or abolition of any public office or to the salary or other conditions of service of any public officer) that any Bill introduced or motion proposed in the Assembly should have effect, then, if the Assembly fail

to pass the Bill or to carry the motion within such time and in such form as the Governor thinks reasonable and expedient, the Governor, acting in his discretion, may, at any time that he thinks fit, and notwithstanding any provision of this Constitution or of any other law in force in Anguilla or of any rules of procedure of the Assembly declare that the Bill or motion shall have effect as if it had been passed or carried by the Assembly either in the form in which it was introduced or proposed or with such amendments as the Governor thinks fit which have been moved or proposed in the Assembly or any Committee thereof; and the Bill or the motion shall be deemed thereupon to have been so passed or carried, and the provisions of this Constitution, and in particular the provisions relating to assent to Bills and disallowance of laws, shall have effect accordingly:

Provided that the Governor shall not exercise his powers under this subsection without prior written instructions from a Secretary of State, unless in his judgment the matter is so urgent that it is necessary for him to do so before having consulted a Secretary of State.

(2) The Governor shall forthwith report to a Secretary of State every case in which he makes any such declaration and the reasons therefor.

(3) If any member of the Assembly objects to any declaration made under this section, he may, within fourteen days of the making thereof, submit to the Governor a statement in writing of his reasons for so objecting, and a copy of the statement shall (if furnished by the member) be forwarded by the Governor as soon as is practicable to a Secretary of State.

(4) Any declaration made under this section other than a declaration relating to a Bill may be revoked by a Secretary of State and the Governor shall forthwith cause notice of the revocation to be published by notice in the Official Gazette; and from the date of such publication any motion that is deemed to have been carried by virtue of the declaration shall cease to have effect and the provisions of section 16(1) of the Interpretation Act 1978 shall apply to the revocation as they apply to the repeal of an Act of Parliament.

### **Assent to Bills**

**57.** (1) A Bill shall not become a law until—

- (a) the Governor has assented to it in Her Majesty's name and on Her Majesty's behalf and has signed it in token of his assent; or
- (b) Her Majesty has given Her assent to it through a Secretary of State and the Governor has signified Her assent by Proclamation.

(2) When a Bill is presented to the Governor for his assent, he shall, subject to the provisions of this Constitution and of any Instructions addressed to him under Her Majesty's Sign Manual and Signet or through a Secretary of State, declare that he assents to it, or that he reserves the Bill for the signification of Her Majesty's pleasure:

Provided that the Governor shall reserve for the signification of Her Majesty's pleasure—

- (a) any Bill which appears to him to be in any way repugnant to, or inconsistent with, the provisions of this Constitution; and
- (b) any Bill which determines or regulates the privileges, immunities or powers of the Assembly or of its members, unless he has been authorised by a Secretary of State to assent to it.

### **Return of Bills by Governor**

**58.** The Governor may return to the Assembly any Bill presented to him for assent, transmitting therewith any amendment which he may recommend, and the Assembly shall deal with such recommendation.

### **Disallowance of laws**

**59.** (1) Any law to which the Governor has given his assent may be disallowed by Her Majesty through a Secretary of State.

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

(3) The provisions of section 16(1) of the Interpretation Act 1978, shall apply to the annulment of any law under this section as they apply 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.

### **Oath of allegiance**

**60.** Except for the purpose of enabling this section to be complied with, no ex-officio, nominated or elected member of the Assembly shall be permitted to take part in its proceedings until he has made before the Speaker an oath of allegiance in the form set out in the Schedule to the Constitution:

Provided that the election of a Speaker and Deputy Speaker of the Assembly may take place before the members thereof have made such oath.

### **Registration of interests**

**60A.** (1) The Speaker shall maintain a Register of Interests in accordance with this section.

(2) It shall be the duty of each member of the Assembly to declare to the Speaker, for entry in the Register of Interests, such interests, assets, income and liabilities of that member, or of any other person connected with him, as may be prescribed by law.

(3) A member of the Assembly shall make a declaration under subsection (2) of this section—

- (a) upon becoming a member of the Assembly;
- (b) at such intervals thereafter (being no longer than twelve months) as may be prescribed by law;
- (c) upon the acquisition of any interest, asset or liability which is not entered in the Register of Interests; and
- (d) upon the disposal of any interest, asset or liability which has been entered in the Register of Interests.

(4) A law made under section 47 of this Constitution shall make provision for giving effect to this section.

### **Privileges of Assembly and members**

**61.** A law enacted under this Constitution may determine and regulate the privileges, immunities and powers of the Assembly and its members, but no such privileges, immunities or powers shall exceed those of the Commons' House of Parliament of the United Kingdom or of the members thereof.

### **Sessions**

**62.** (1) Subject to the provisions of this Constitution, the sessions of the Assembly shall be held at such places and begin at such times as the Governor may from time to time by Proclamation appoint.

(2) There shall be at least one session of the Assembly in every year, so however that there shall be an interval of less than twelve months between the last sitting in one session and the first sitting in the next session.

### **Prorogation and dissolution**

**63.** (1) The Governor, acting in accordance with the advice of the Chief Minister, may at any time, by Proclamation published in the Official Gazette, prorogue the Assembly.

(2) The Governor, acting after consultation with the Chief Minister, may at any time, by Proclamation published in the Official Gazette, dissolve the Assembly.

(3) The Governor shall dissolve the Assembly at the expiration of five years from the date when the Assembly first meets after any general election unless it has been sooner dissolved.

### **General elections**

**64.** There shall be a general election at such time within two months after every dissolution of the Assembly as the Governor shall by Proclamation appoint.

## **CHAPTER VI THE PUBLIC SERVICE**

**Public Service—General**  
**Public Service Commission**

**65.** (1) There shall be in and for Anguilla a Public Service Commission which shall consist of five members of whom three shall be appointed by the Governor, acting in his discretion, and two shall be appointed by the Governor, acting after consultation with the public service staff associations.

(2) The Governor, acting after consultation with the Chief Minister, shall appoint one of the members of the Public Service Commission to be Chairman of the Commission.

(3) No person shall be qualified to be appointed as a member of the Public Service Commission if he is a member of, or a candidate for election to, the Assembly, or holds or is acting in any public office.

(4) The office of a member of the Public Service Commission shall become vacant—

(a) at the expiration of two years from the date of his appointment or such earlier times as may be specified in the instrument by which he was appointed;

(b) if he resigns his office by writing under his hand addressed to the Governor;

(c) if he becomes a member of, or a candidate for election to, the Assembly or is appointed to or to act in any public office; or

(d) if the Governor, acting in his discretion, directs that he shall be removed from office for inability to discharge the functions thereof (whether arising from infirmity of body or mind or any other cause) or for misbehaviour.

(5) If the office of a member of the Public Service Commission is vacant or a member is for any reason unable to perform the functions of his office, the Governor acting in the manner prescribed by subsection (1) of this section, for the appointment of that member may appoint a person who is qualified for appointment as a member of the Commission to act as a member of the Commission, and any person so appointed shall, subject to the provisions of the preceding subsection, continue so to act until he is notified by the Governor acting in his discretion, that the circumstances giving rise to the appointment have ceased to exist:

Provided that, in the case of a vacancy in the office of the Chairman or the inability of the holder thereof to perform his functions, the functions of the office of Chairman shall be performed by such member of the Commission or person acting as a member as the Governor, acting after consultation with the Chief Minister, may designate.

(6) There shall be charged on the revenues of Anguilla and paid thereout to the members of the Public Service Commission such emoluments as may be prescribed by any law for the time being in force in Anguilla: Provided that the emoluments of a member of the Commission shall not be reduced during his continuance in office.

**Power to appoint, etc., to public offices**

**66.** (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 the Governor, acting in his discretion in relation to the offices of Deputy Governor, Attorney-General and Chief Auditor and in relation to all other offices acting after consultation with the Public Service Commission: Provided that before appointing any person to any such other office being that of a permanent secretary or head of a department the Governor shall in addition consult with the Chief Minister.

(2) The Governor, acting after consultation with the Public Service Commission, may, by regulations published in the Official 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 him by the last foregoing subsection.

(3) The provisions of subsection (1) of this section shall not apply to—  
(a) any office to which section 68 of this Constitution applies; or  
(b) any office in the Police Force below the rank of Assistant Superintendent to the extent that the Chief of Police or some other officer of the Police Force is empowered by any law for the time being in force in Anguilla to exercise the powers mentioned in that subsection.

**Judicial Service Commission**

**67.** There shall be for Anguilla a Judicial Service Commission which shall consist of—

(a) the Chief Justice, who shall be Chairman;  
(b) another judge of the Court of Appeal or the High Court nominated by the Chief Justice after consultation with the Governor; and (c) the Chairman of the Public Service Commission.

**Power to appoint, etc., to judicial offices**

**68.** (1) Power to make appointments to the offices to which this section applies and to remove and exercise disciplinary control over persons holding or acting in such offices shall vest in the Governor, acting after consultation with the Judicial Service Commission.

(2) This section applies to the office of Magistrate, to any office in the public service 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 for the time being in force in Anguilla.

## **Pensions**

### **Applicability of pensions law**

**69.** (1) Subject to the provisions of section 71 of this Constitution, the law applicable to the grant and payment to any officer, or to his widow, children, dependants or personal representatives, of any pension gratuity or other like allowance (in this section and the two next following sections referred to as an “award”) in respect of the service of that officer in a public office shall be that in force on the relevant day or any later law not less favourable to the person concerned.

(2) For the purposes of this section the relevant day is—

- (a) in relation to an award granted before 1st April 1982 the day on which the award was granted;
- (b) in relation to an award granted or to be granted on or after that day to or in respect of a person who was a public officer before that day, the day immediately before that day;
- (c) in relation to an award granted or to be granted to or in respect of a person who first becomes a public officer on or after that day, the day on which he becomes a public officer.

(3) For the purposes of this section, in so far as the law applicable to an award depends on the option of the person to or in respect of whom it is granted or to be granted, the law for which he opts shall be taken to be more favourable to him than any other law for which he might have opted.

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

**70.** Awards granted under any law for the time being in force in Anguilla shall be charged on and paid out of the revenues of Anguilla.

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

**71.** (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 discretion.

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

## **CHAPTER VII**

## MISCELLANEOUS

### Appeals to Her Majesty in Council

**72.** (1) In the following cases, an appeal shall lie from decisions of the High Court to the Court of Appeal and thence to Her Majesty in Council as of right, that is to say—

- (a) final decisions, in any civil or criminal proceedings, on questions as to the interpretation of this Constitution;
- (b) final decisions in any civil proceedings where the matter in dispute on the appeal is of the value of EC\$2,500 or upwards or where the appeal involves, directly or indirectly a claim to or a question respecting property or a right of the value of EC\$2,500 or upwards;
- (c) final decisions in proceedings under section 16 of this Constitution;
- (d) final decisions in proceedings for dissolution or nullity of marriage; and
- (e) in such other cases as may be prescribed by the Legislature.

(2) In the following cases, an appeal shall lie from decisions of the High Court to the Court of Appeal with the leave of the High Court or of the Court of Appeal and hence to Her Majesty in Council with the leave of the Court of Appeal, that is to say—

- (a) where the decision appealed against is a final decision in civil proceedings and, in the opinion of the court giving leave, the question involved in the appeal is one that, by reason of its great general or public importance or otherwise, ought to be submitted to the Court of Appeal or to Her Majesty in Council, as the case may be; and
- (b) in such other cases as may be prescribed by the Legislature.

(3) The foregoing provisions of this section shall be subject to the provisions of section 41(2) of this Constitution.

(4) In this section the references to final decisions of a court do not include any determination thereof that any application made thereto is merely frivolous or vexatious.

(5) Nothing in this section shall affect any right of Her Majesty to grant special leave to appeal to Her Majesty in Council from the decision of any court in any civil or criminal matter.

### Interpretation

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

“Assembly” means the House of Assembly;

“Chief Justice” means the Chief Justice referred to in the Supreme Court Order;

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

“functions” includes jurisdictions, powers and duties;

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

“law” includes any instrument having the force of law made in exercise of a power conferred by a law;  
“Legislature” means the legislature established by Chapter V of this Constitution and includes Her Majesty in Council;  
“public office” means, subject to the provisions of the next following subsection, an office of emolument in the public service;  
“public officer” means the holder of any public office, and includes a person appointed to act in any public office;  
“the public service” means the service of the Crown in a civil capacity in respect of the government of Anguilla;  
“session” means the meetings of the Assembly commencing when the Assembly first meets after its prorogation or dissolution at any time, and terminating when the Assembly is prorogued or is dissolved without having been prorogued;  
“sitting” means a period during which the Assembly is sitting continuously without adjournment and includes any period during which the Assembly is in committee.

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

- (a) is in receipt of any remuneration or allowance as a member of the Executive Council or the Assembly;
- (b) is in receipt of a pension or other like allowance in respect of service under the Crown; or
- (c) holds an office the holder of which is declared by any law in force in Anguilla not to be disqualified for election as a member of the Assembly.

(3) Any person who has vacated his seat in any body, or has vacated any office established by this Constitution may, if qualified, again be appointed or elected as a member of that body or to that office, as the case may be, from time to time.

(4) A reference in this Constitution to the holder of an office by the term designating his office shall be construed as a reference to any person for the time being lawfully performing the functions of that office.

(5) Without prejudice to the last foregoing subsection—

- (a) where the holder of any office constituted by or under this Constitution is on leave of absence pending the relinquishment of that office, the person or authority having power to make appointments to that office may appoint another person thereto; and
- (b) where two or more persons concurrently hold the same office by virtue of the foregoing paragraph, the person last appointed shall in respect of any function conferred on the holder of that office be deemed to be the sole holder thereof.

(6) Any power conferred by this Constitution to make any Proclamation or order or to give any directions shall be construed as including a power exercisable in like manner to amend or revoke any such Proclamation, order or directions.

(7) Where a person is required by this Constitution to make an oath he shall if he so desires be permitted to comply with that requirement by making an affirmation in accordance with the provisions of the Schedule to this Constitution.

(8) For the purpose of this Constitution the resignation of a member of any body or holder of any office thereby established that is required to be addressed to any person shall, unless otherwise expressly provided, be deemed to have effect from the time at which it is received by that person.

### **Public Seal**

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

### **Grants of land**

**75.** Subject to the provisions of any law for the time being in force in Anguilla, the Governor or any person duly authorised by him in writing under his hand may, in Her Majesty's name and on Her behalf, make and execute under the public seal grants and dispositions of any land or other immovable property within Anguilla that may be lawfully granted or disposed of by Her Majesty.

### **Governor's power of pardon**

**76.** Subject to any Instructions given to him by Her Majesty under Her Sign Manual and Signet, the Governor may, in Her Majesty's name and on Her behalf—

- (a) grant to any person concerned in the commission of any offence for which he may be tried in Anguilla, or to any person convicted of any offence under any law in force in Anguilla, a pardon, either free or subject to lawful conditions;
- (b) grant to any person so convicted a respite, either indefinite or for a specified period, of the execution of any sentence passed on him in respect of the conviction;
- (c) substitute a less severe form of punishment for that imposed on any such person by any such sentence; or
- (d) remit the whole or any part of any such sentence or of any penalty or forfeiture due to Her Majesty by reason of the conviction.

### **Offices and appointments**

**77.** The Governor, in Her Majesty's name and on Her behalf, may constitute such offices for Anguilla as may lawfully be constituted by Her Majesty and, subject to the provisions of any law in force in Anguilla, may make appointments (including appointments on promotion and transfer) to any such office; and any person so appointed shall, unless it is otherwise provided by any such law, hold office during Her Majesty's pleasure.

### **Discipline**

**78.** (1) Subject to the provisions of any law in force in Anguilla, the Governor may for cause shown to his satisfaction dismiss or suspend from the exercise of his office any person holding a public office, or take such disciplinary action as may seem to him to be desirable.

(2) The reference in this section to the power to dismiss any person holding a public office shall be construed as including a reference to any power to require or permit a person to retire.

### **Chief Auditor**

**79.** (1) There shall be a Chief Auditor whose office shall be a public office.

(2) The accounts of the Assembly and all government departments and offices (including the Public Service Commission) shall be audited and reported on annually by the Chief Auditor, and for that purpose the Chief Auditor or any person authorised by him in that behalf shall have access to all books, records, returns and other documents relating to such accounts.

(3) The Chief Auditor shall submit his reports made under subsection (2) of this section to the Speaker of the Assembly who shall cause them to be laid before the Assembly; and the Chief Auditor shall also send a copy of each report to the Governor.

(4) In the exercise of his functions under this section, the Chief Auditor shall not be subject to the direction or control of any other person or authority.

### **Belonger status**

**80.** (1) There shall be an Anguilla Belonger Commission (hereinafter referred to as “the Commission”), the composition and functions of which shall, subject to the provisions of this section, be prescribed by law.

(2) For the purposes of this Constitution a person shall be regarded as belonging to Anguilla if that person—

(a) is a British Dependent Territories citizen—

- (i) who was born in Anguilla, whether before or after the commencement of the British Nationality Act 1981; or if not so born
- (ii) who was adopted in Anguilla; or
- (iii) whose father or mother was born in Anguilla; or
- (iv) whose father or mother became a British Dependent Territories citizen by virtue of having been adopted in Anguilla; or
- (v) who is 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 (or would have done so but for his or her death) or so became such a citizen after such commencement of the said Act; or

(vi) who by virtue of registration or naturalisation while resident in Anguilla became such a citizen at or after the commencement of the British Nationality Act 1981; or

(b) is domiciled in Anguilla, has been ordinarily resident in Anguilla for not less than fifteen years, and has been granted belonger status by the Commission; or

(c) was born in Anguilla of a father or mother who was born in Anguilla and who is regarded (or, if deceased, would if alive be regarded) as belonging to Anguilla by virtue of this subsection; or

(d) was born outside Anguilla and has satisfied the Commission that his father or mother was born in Anguilla and is regarded (or, if deceased, would if alive be regarded) as belonging to Anguilla by virtue of this subsection; or

(e) is the spouse of such a person as is referred to in any of the preceding paragraphs of this subsection and has been married to that person for not less than five years; or

(f) is the spouse of such a person as is referred to in paragraph (a), (b), (c) or (d) of this subsection, has been married to such a person for not less than three years, and has been granted belonger status by the Commission.

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**THE SCHEDULE TO THE CONSTITUTION  
FORMS OF OATHS AND AFFIRMATIONS  
Sections 19(4), 30 and 60**

**1. Oath of Allegiance**

I ..... do  
swear that I will  
be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second,  
Her Heirs and  
Successors, according to law. So help me God.

**2. Oath for due execution of office**

I ..... do  
swear that I will  
well and truly serve Her Majesty Queen Elizabeth the Second, Her Heirs and  
Successors, in the office  
(*here insert the description of the office*). So help me God.

**3. Affirmations**

In the forms above respectively set forth, for the word “swear” there shall be substituted the words “solemnly and sincerely affirm and declare”, and the words “So help me God” shall be omitted.

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**Transitional provisions**

**26.** (1) The persons who, immediately before the commencement of this Order, are the nominated members of the Assembly shall be deemed, on and after such commencement, to have been appointed as nominated members in accordance with section 35 of the Constitution as amended by this Order.

(2) The person who, immediately before the commencement of this Order, holds the office of Speaker of the Assembly shall be deemed, on and after such commencement, to have been elected to that office in accordance with section 50 of the Constitution as amended by this Order.

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