

[draft of 23 November 2016]

## **DRAFT NEW CONSTITUTION FOR ANGUILLA**

### **EXPLANATORY MEMORANDUM**

In execution of the mandate given to it by the Executive Council of the Government of Anguilla in September 2015, the Constitutional and Electoral Reform Committee makes a number of proposals for constitutional reform. While several attempts were made to engage with members of the public, the opportunities offered were not taken up by many persons. We hope that the publication of our proposals for constitutional reform will be seen as yet another opportunity for public engagement. Members of the Committee would welcome any invitation to engage in further public discussion on its proposals before they are formally submitted to Executive Council. The final version of the draft new Constitution will need to be approved both by Executive Council and by a Resolution of the House of Assembly before it is taken to the United Kingdom for discussion and agreement with the Foreign and Commonwealth Office. We have placed additional detailed information on the various proposals in the footnotes to the various sections. The major new proposals include the following:

#### **Preamble**

We propose the introduction of a Preamble to the Constitution, as recommended by paragraph 4 of the 2006 Report.<sup>1</sup>

#### **Fundamental Rights**

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

This section now

- (1) Guarantees the right of an arrested person to be informed orally and in writing of the charge as recommended by paragraph 12 of the 2006 Report (subsection (3)).

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<sup>1</sup> [http://www.gov.ai/constitutional\\_reform.php](http://www.gov.ai/constitutional_reform.php)

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

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

This section

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

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

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

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

This section

- (1) Makes Chamber hearings public by omitting them from the exception (subsection (4)).
- (2) Obliges the government to provide a lawyer to any person charged with a serious criminal offence if he cannot afford one, and if the interests of justice so require (subsection (6)(c)).
- (3) Gives the right to an accused to opt to be tried by a judge alone without a jury (subsection (6)(f)).

- (4) Permits a criminal trial to proceed if the accused deliberately absconds (subsection (7)(b)).
- (5) Provides compensation to a person wrongfully charged and convicted of a criminal offence who is subsequently found to have been a victim of a miscarriage of justice (subsection (12)).

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

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

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

This section

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

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

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

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

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

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

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

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

- (1) This section obliges the Governor to act on the advice of Cabinet, as recommended by paragraph 28 of the 2006 Report (subsection (1)).

- (2) The state of emergency lapses after 21 days unless confirmed by the Legislature (subsection (3)(b)).

## **Chapter 2: Interpretation**

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

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

## **Chapter 3: The Governor**

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

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

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

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

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

The wording is mainly taken from the VI Constitution. The principal change is to formally make the DG the head of the public service (subsection (3)).

## **Chapter 4: The Executive**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Cabinet Secretary** (section 47).

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

**Chapter 5 – The Public Service**

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

- (1) The principal change is that the Deputy Governor (DG) now no longer acts merely after consultation with the PSC, but is generally obliged to act on the advice of the PSC.
- (2) (a) The Governor appoints the DG and the Chief Auditor after consulting the Premier and the Leader of the Opposition (subsection (1)(a)).  
(b) the DG appoints teachers in accordance with the advice of the Teaching Service Commission; police officers in accordance with the advice of the Police Service Commission; and all other offices in accordance with the advice of the PSC (or any combined PSC in accordance with section 103(1)(h)).
- (3) If the DG is minded to act against the advice, he may refer the matter back to the service commission along with a reasoned statement for reconsideration by it (subsection (2)).
- (4) If the PSC substitutes different advice, the process is repeated (subsection (3)).



- (5) The DG must consult the Premier on the appointment of any department head or more senior officer (subsection (4)).
- (6) The Governor appoints the Cabinet Secretary on the advice of the Premier, but the Governor may ignore the advice if he is satisfied that advice would prejudice HM's service (ie, is perverse), (subsection (5)).
- (7) Where the Governor is minded to refuse the Premier's advice on the appointment of a Cabinet Secretary, he should refer the appointment back to the Premier for advice from the PSC (subsection (6)).
- (8) The Premier recommends appointment of the Cabinet Secretary from a list of qualified and competent persons submitted by the PSC, provided the Premier can once request an additional list from the PSC (subsection (7)).
- (9) The DG may delegate his powers of appointment (subsection (8)).
- (10) The Premier may request a report about the functioning of the public service from each of the service commissions. This is an advanced provision which introduces a sense of responsibility for the good functioning of the public service into the top ranks of the political directorate (subsection (9)).
- (11) This section does not apply to appointment to judicial offices (subsection (10)).
- (12) In the event one service commission performs the functions of the three commissions, the provisions apply equally (subsection (11)).

## **Chapter 6 – House of Assembly**

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

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

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

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

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

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

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

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

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

- (1) Absence from 3 meetings of the House of Assembly requires prior notice to the Speaker (paragraph (b)).
- (2) There is a provision for the voters to recall an elected member (paragraph (f)).
- (3) Within one month of the coming into effect of this Constitution members of the Assembly are required to file their declaration of interests under section 93 and to file the same annually thereafter, failing which their seat in the Assembly is declared vacated (paragraph (g)).

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

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

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

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

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

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

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

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

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

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

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

- (1) The main change is to remove citizenship as a qualification, as recommended by paragraphs 102-103 of the 2006 Report.
- (2) To be a voter, one must be an Anguillian (subsection (1)(a)).

- (3) One must be ordinarily resident for 3 years, as compared with the present requirement for residence only, as recommended by paragraph 104 of the 2006 Report (subsection (1)(b)).

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

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

**Elected members** (section 67).

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

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

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

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

**Quorum** (section 71).

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

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

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

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

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

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

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

### **Return of bills by Governor** (section 76).

- (1) The previous position (section 58) was unclear what was to happen if the Governor returned a Bill to the Assembly and the Assembly did not accept the Governor's recommendation. The position is made clear in three subsections.
- (2) The Governor may return a Bill to the House with a recommendation for amendment for the Assembly to consider (subsection (1)).
- (3) If the Assembly changes the recommendation, the Governor may return it with further recommendation (subsection (2)).
- (4) If the Assembly rejects the amendment the Governor must assent to the Bill (subsection (3)).

### **Power of Disallowance**

The present 1982 Constitution (section 59) provides that even where the Governor has given his Assent to a Bill, the Secretary of State could disallow it. The 2006 Report at paragraph 133 recommended that this old colonial provision

was no longer appropriate, and should be removed. This draft accordingly has no provision for disallowance by the Secretary of State.

**Standing Committees** (section 77).

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

**Chapter 8 – The Judicature**

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

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

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

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

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

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

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

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

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

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

- (1) The original district boundaries of Anguilla have never been revised, and are now of uneven area and population density. There is need to revise the boundaries, and to do this there must be an independent Commission authorised to carry out this function.
- (2) The Commission would be appointed every 10 years (to coincide with any national census report or findings) (subsection (1)).

- (3) The Chairman would be appointed by the Governor and one member on the advice of the Premier and the Leader of the Opposition (subsection (2)).
- (4) A member of the Assembly and a public officer are disqualified (subsection (3)).
- (5) A quorum for meetings shall be 2 (subsection (4)).
- (6) All members must vacate office the day after submitting a report; or if he becomes disqualified (subsection (5)).

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

- (1) The new Elections Act is expected to come into effect before the new Constitution is adopted. The Act will provide for an Electoral Boundaries Commission to be established and appointed (as the present Constitution permits). The Commission is to proceed to divide the island into 9 local districts and 4 island-wide districts. This section, when the new Constitution comes into effect, will then give a constitutional guarantee of this process.
- (2) This section imposes a duty on the Electoral District Boundary Commission to review the boundaries and to submit a Report to the Governor and the Assembly containing recommendations (subsection (1)).
- (3) The Commission must seek to make the districts approximately equal in numbers of voters based on the last previous census report (subsection (2)).
- (4) Once the Report is delivered, a Bill is introduced into the House to give effect to the Report (subsection (3)).
- (5) If the Bill seeks to modify the Commission's recommendations, there must be a statement of the reasons submitted at the same time (subsection (4)).



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

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

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

Note that this may be amalgamated with the PSC.

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

Note that this may be amalgamated with the PSC.

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

- (1) This new proposal removes the promotion and appointment and promotion of police officers from the personal control of the Commissioner of Police and divides that power between the Governor for senior officers and the Deputy Governor for junior officers.
- (2) Up to the rank of Inspector, appointments are to be made by the DG acting on the advice of the Police Service Commission. The DG may go against that advice if it would prejudice HM's service (ie, is perverse) (subsection (1)).
- (3) Appointments above the rank of Inspector are made by the Governor acting on the advice of the Police Service Commission after approval by the National Security Commission, but the Governor may act against that advice if he is satisfied it would prejudice HM's service (subsection (2)).

- (4) Before rejecting the advice of the Police Service Commission the Deputy Governor and Governor may once refer the matter back (subsection (3)).
- (5) If the PSC on reconsideration makes another recommendation, the process starts again (subsection (4)).
- (6) The DG may delegate his powers. This provision will permit the DG to delegate his powers in suitable cases, eg, very junior officers, to a senior police officer (subsection (5)).

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

- (1) The establishment of this Commission (the NSC) follows the recommendation in paragraph 179 of the 2006 Report.
- (2) The NSC consists of the Governor, the DG, the Premier, one other Minister, the A-G, and the COP (subsection (1)).
- (3) The NSC advises the Governor on matters relating to internal security. The Governor is normally obliged to act on such advice, unless he considers it not in HM's interest (ie, perverse) (subsection (3)).
- (4) The COP is to provide regular briefings to the Commission (subsection (4)).
- (5) The NSC may invite any person or summon any public officer to attend (subsection (5)).
- (6) The Governor must summon the Commission if the Premier so requests (subsection (6)).
- (7) The NSC regulates its own procedure (subsection (7)).
- (8) The Cabinet Secretary is secretary to the NSC (subsection (8)).
- (9) The quorum is 4 members (subsection (9)).

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

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

**Appointments Commission** (section 94).

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

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

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

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

- (1) This section already exists, but the wording is taken from the VI Constitution amended to continue the present practice of making appointments on contract (subsection (9)).
- (2) It deals with appointments of the A-G, the DPP, a Magistrate, a Registrar, and Crown Counsel (subsection (4)).
- (3) The A-G must be an Anguillian unless there is no qualified Anguillian willing to be appointed (subsection (6)).

**Integrity Commission** (section 97).

- (1) The Commission would consist of a Chairman, who must be a barrister of at least 10 years' experience, and 2 other members appointed one on the recommendation of the Premier and the other on the recommendation of the Leader of the Opposition (subsection (1)).
- (2) It promotes integrity, honesty and good faith in public life (subsection (3)).

- (3) It exercises the functions conferred by sections 37, 55, 98, and 126. It will publish a Code of Conduct for Persons in Public Life and investigate any alleged failure to abide by the Code. It will have such other functions as a law may confer (subsection (4)).
- (4) A quorum is 2 out of the 3 (subsection (5)).
- (5) The Commission makes an annual Report to the House which is to be published (subsection (6)).

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

- (1) There has always been provision for such a Register in previous Anguilla Constitutions, applying only to Members of the Assembly, but there has never been a provision for enforcement. It is proposed that such a provision be now introduced.
- (2) The Register of Interests will now be a public document (subsection (1));
- (3) There is a duty to declare such interests, assets, income and liabilities of any person to whom the section applies or any person connected to him as may be prescribed by a law (subsection (2)).
- (4) The declaration is to be made on assuming office, and every 12 months thereafter (subsection (3)).
- (5) The section applies to all members of the House of Assembly immediately upon the coming into effect of the Constitution, and subsequently to the holders of all other offices as may be prescribed by law (subsection (4)). It is expected that this provision will be extended to all Permanent Secretaries, Heads of Departments, and members of public boards, committees and commissions, of whom accountability, transparency and integrity are demanded.
- (6) The law may set out the sanctions for failure to comply. Members of the Assembly are immediately bound by this requirement and their sanction is loss of their seat as provided by section 57(g). Failure of a Member of the

Assembly to declare his interests annually results in automatic loss of his seat under section 57(g) (subsection 5).

**Anguillian Status Commission** (section 99).

- (1) This provision is based on the recommendations at paragraphs 167-178 of the 2006 Report.
- (2) The principle change is to give the grandchildren of Anguillians full rights, and to give the great-grandchildren of Anguillians full rights if they satisfy certain residence conditions. Another change is to increase the period of time a non-Anguillian must reside on Anguilla before being entitled to apply for status from 15 years to 20 years. A third is to get rid of “Belonger” and to replace it with “Anguillian”.
- (3) The first subsection establishes the Commission (subsection (1)).
- (4) The second subsection defines an Anguillian as a person who is or was
  - (a) born or adopted with an Anguillian parent or grandparent;
  - (b) a great-grandchild of an Anguillian who has resided in Anguilla for 5 years, which status may be withdrawn on conviction of an indictable offence;
  - (c) resident on Anguilla for 15 years or through marriage, which status may be revoked on conviction of an indictable offence;
  - (d) the spouse of an Anguillian married for a period of not less than 5 years, which status may be withdrawn on conviction of an indictable offence;
  - (e) the minor child of a person qualifying by residence under (c) above who has been residing in Anguilla for at least 3 years, which status may be withdrawn on conviction of an indictable offence;
  - (f) born in Anguilla and living here for 12 years, which status may be withdrawn on conviction of an indictable offence; and
  - (g) previously granted Belonger Status.

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

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

**Commissions of Inquiry** (section 101).

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

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

- (1) This is a consolidation of various provisions governing individual Commissions to avoid duplication and repetition.
- (2) A Commission is not to be subject to the direction or control of any other person or authority (subsection (2)).
- (3) A Commission may confer powers or impose duties on any public officer for the purpose of discharging its functions (subsection (3)).
- (4) The Chairman is appointed by the Governor (subsection (5)).
- (5) Independence is protected by insulating their emoluments from political attack (subsection 11)).
- (6) Each Commission must report annually to the House of Assembly (subsection (13)).
- (7) The Report must be published within one month (section (14)).

**Legislation regarding Commissions** (section 103).

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

**Human Rights Commissioner** (section 104).

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

**Complaints Commissioner** (section 105).

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

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

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

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

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

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

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

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

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

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

- (1) The section is adapted and consolidated from various provisions relating to individual Commissioners in the Constitutions of other BOTs.
- (2) Appointments are to be for a minimum period of 5 years to guarantee political independence. Appointment is by the Governor after consultation with the premier and the Leader of the Opposition (subsection (2)).
- (3) Political persons may not be appointed (subsection (3)).
- (4) A Commissioner may not be employed in the public service or engage in any occupation for reward, save where authorised by the Governor in writing (subsection (5)).
- (5) A Commissioner is not to be subject to the direction or control of any person (subsection (6)).
- (6) A law may provide for payment of a salary to a Commissioner, which may not be reduced while he is in office, as a guarantee independence (subsection (7)).



- (7) For efficiency and the saving of costs, various Commissioners may be amalgamated into one office to be known as the Constitutional Commissioner (subsection (8)).
- (8) Each Commissioner must publish an annual Report to the House of Assembly (subsection (10)).
- (9) The Speaker is obliged to publish the Report on a publicly available website (subsection 11)).

**Public assets** (section 111).

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

### **Chapter 10 – Public Finance**

As a further guarantee of good governance, it is generally accepted among the Anguillian citizenry that public finances need to be more thoroughly regulated, and the rules more stringently enforced, than they have been in previous years. The present rules for handling the public finances of Anguilla are set out in the existing Financial Administration and Audit Act. The deliberate ignoring of the rules over the past decades has caused the Chief Auditor to be critical of Anguilla's public accounts.<sup>2</sup> We have, it appears, never in the history of Anguilla's public accounts received a clean audit report.

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

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<sup>2</sup> <http://www.gov.ai/documents/hoa/Government%20of%20Anguilla%202013%20Accounts.pdf>

**General principles** (section 112).

- (1) This provision is section 3 of the draft 2015 Order, amended to take account of the Terms of Reference (ToR) agreed between the Government of Anguilla (GOA) and the FCO. Its main provisions are as follows.
- (2) The macro-economic and fiscal policies of GoA are to be formulated for the sustained long term prosperity of the people of Anguilla (subsection (1)).
- (3) Public funds to be managed on principles of value for money, etc, (subsection (2)).
- (4) GoA must formulate a Fiscal Framework setting limits to public debt relative to public revenue; limiting debt service costs; and setting levels of reserves (subsection (3)).
- (5) The Fiscal Framework is to be agreed with the FCO and published in the Gazette (subsection 4)).
- (6) Every 6 months the Minister of Finance (MoF) must report to the House of Assembly (HoA) on the performance of GoA in implementing the Fiscal Framework; and, on the state of the public finances and the economy of Anguilla (subsection (6)).
- (7) GoA shall aim to achieve a surplus budget, and where an Appropriation Act will not return a surplus budget, the Minister must lay before the HoA a statement explaining the reasons (subsection (7)).
- (8) Where GoA is in breach of the Fiscal Framework, any Appropriation Bill must be approved by the Secretary of State (SoS); and GoA must agree with the SoS a Medium Term Fiscal Plan with milestones for meeting key debt ratios, etc (subsection (8)).

**Taxation** (section 113).

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

**Contingent liabilities** (section 114).

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

**Consolidated Fund** (section 115).

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

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

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

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

- (1) The new provision is that at least 6 weeks before the new financial year the MoF is to present to the HoA the estimates of revenue and expenditure; a document setting out targets for revenue and expenditure; and an assessment of performance against debt sustainability limits as set out in the Fiscal Framework.
- (2) These estimates and document are to be published without delay.

**Appropriation Bill** (section 118).

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

- (2) If the funds appropriated are insufficient, there shall be a supplementary estimate laid by the MoF before the HoA (subsection (2)).
- (3) The supplementary estimate shall be included in a Supplementary Appropriation Bill introduced into the HoA (subsection (3)).
- (4) The Governor may refuse to assent to an Appropriation Bill if it is inconsistent with section 107 or the Fiscal Framework (subsection (4)).

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

- (1) All borrowing must be authorised by an Act and be in accordance with the Fiscal Framework and other agreed borrowing guidelines (subsection (2)).
- (2) The MoF to report to the House every 6 months as to the total indebtedness, the servicing of the loan; and the utilization and performance of the loan (subsection (4)).
- (3) Where UK guarantees any loan GoA shall repay the loan as quickly as possible (subsection (5)).
- (4) Any UK guarantee shall be the subject of a counter-guarantee (subsection (6)).
- (5) Any agreement for GoA to give a loan shall have no effect unless approved by HoA by resolution (subsection (8)).
- (6) Any such resolution shall be compatible with section 107 and the Fiscal Framework (subsection (9)).

**Further powers of Governor**

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

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

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

**Appropriations Committee** (section 121).

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

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

- (1) It is recognised that unless the provision of resources for institutions of good governance is removed from the control of the political directorate and placed in the hands of the Assembly, a Commission that has fallen out of favour is likely to be neutralised by starving it of funds.
- (2) It is the duty of Government to provide any accommodation and other resources reasonably required and the PSC may approve the temporary transfer to any institution of members of the public service reasonably requested by the institution (subsection (1)).
- (3) By August 31 of each year, every institution must submit its budget for approval by the Appropriations Committee and by the HoA (subsection (2)).
- (4) The HoA may pass or reject such a budget but may not amend it (subsection (3)).
- (5) If it is passed, it forms part of the Appropriation Act for that year (subsection (4)).
- (6) If it is rejected, the Appropriations Committee reconsiders it, discusses it with the institution, and recommends a revised budget to the HoA (subsection (5)).

**Public Accounts Committee** (section 123).

- (1) As recommended by paragraph 126 of the 2006 Report, the PAC will have power to summon witnesses to testify on oath in public hearings.
- (2) The PAC consists of at least 3 members appointed by the Speaker from among members who are not Ministers and 2 members who are expert in public finance, one appointed by the Speaker and one by the Governor (subsection (1)).
- (3) The Leader of the Opposition continues to be the Chairman of PAC (subsection (2)).
- (4) Membership as an expert in public finance is vacated on the expiration of the period for which he was appointed; if he becomes a member of the HoA, or if his appointment is revoked (subsection (3)).
- (5) The PAC examines and reports on the Chief Auditor's Report and such other functions as may be prescribed (subsection (5)).
- (6) The PAC must report to the HoA (subsection (6)).
- (7) If the House adopts a Report of the PAC and requests a member of Cabinet to advise on action taken in respect of the Report, the member concerned must respond within 6 weeks (subsection (7)).

**Accounting officers** (section 124).

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

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

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

**Audit** (section 126).

- (1) The principal change proposed is to require the Chief Auditor's Report to be published and for members of the public to have access to its contents.
- (2) The section establishes the office of Chief Auditor (subsection (1)).
- (3) He is to audit the accounts of the Assembly, all government departments and offices including institutions of good governance (subsection (2)).
- (4) He would submit his Reports to the Governor and to the Speaker who lays them before the HoA (subsection (3)).
- (5) The Speaker shall publish any Report laid before the HoA within one month (subsection (5)).

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## **DRAFT NEW ANGUILLA CONSTITUTION**

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2017 No.

**The Anguilla Constitution Order 2017**

At the Court at Buckingham Palace, the day of 2016<sup>3</sup>

Present

The Queen's Most Excellent Majesty in Council

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

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

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

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

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

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

**PREAMBLE<sup>4</sup>**

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

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

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<sup>3</sup> The commencement follows the format of the style of the Virgin Islands Constitution Order 2007 (hereinafter the "VI Constitution").

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

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

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

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

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

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

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

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

## **CHAPTER 1<sup>5</sup>**

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

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

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

- (a) life, liberty, security of the person, the enjoyment of property and the protection of the law;
- (b) freedom of conscience, of expression, movement and of peaceful assembly and association; and
- (c) respect and protection for his private and family life,<sup>6</sup>

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<sup>5</sup> As suggested by Lolita Richardson's 2009 draft Constitution for Anguilla (hereinafter "Mrs Richardson's draft"), the Fundamental Rights are shifted to Chapter 1.

<sup>6</sup> Amended to follow section 1 of Mrs Richardson's draft.

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

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

3. (1) Every person has a right to life which shall be protected by law.<sup>7</sup>

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

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

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

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

4. (1) Every person has the right to liberty and security of the person which shall be protected by law.<sup>8</sup>

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

- (a) in consequence of his unfitness to plead to a criminal charge;
- (b) in execution of the sentence or order of a court, whether established for Anguilla or some other country, in respect of a criminal offence of which he has been convicted;
- (c) in execution of an order of the High Court or the Court of Appeal or such other court as may be prescribed by the Assembly on the grounds of his contempt of any such court or of another court or tribunal;
- (d) in execution of the order of a court made in order to secure the fulfilment of any obligation imposed on him by law;

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<sup>7</sup> Amendment suggested by section 2 of Mrs Richardson's draft.

<sup>8</sup> Amendment suggested by section 3 of Mrs Richardson's draft.

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

(3) Any person who is arrested or detained shall be informed orally and in writing as soon as reasonably practicable, in a language which he understands, of the reasons for his arrest or detention.<sup>9</sup>

(4) Any person who is arrested or detained shall have the right, at any stage and at his own expense, to retain and instruct without delay a legal representative of his own choice, and to hold private communication with such legal practitioner and, in the case of a minor, to communication with his parent or guardian.<sup>10</sup>

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

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<sup>9</sup> As recommended by paragraph 12 of the 2006 Report.

<sup>10</sup> Suggested by section 3 of Mrs Richardson's draft.

right, to remain silent and to have one person informed by the quickest practicable means of his arrest and his whereabouts.<sup>11</sup>

(6) Any person who is arrested or detained,

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

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

and who is not released, shall be brought within forty eight hours<sup>12</sup> before a court; and if any person arrested or detained upon reasonable suspicion of his having committed or being about to commit a criminal offence under the law of Anguilla is not tried within a reasonable time, then, without prejudice to any further proceedings which may be brought against him, he shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.

(7) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation for such unlawful arrest or detention from that other person, from any person or authority on whose behalf that other person was acting or from them both; but a judicial officer or an officer of a court or a police officer acting in pursuance of the order of a judicial officer shall not be personally liable to pay compensation under this subsection in respect of anything done by him in good faith in the discharge of the functions of his office and any liability to pay any such compensation in respect of that thing shall be a liability of the Crown.<sup>13</sup>

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

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

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

<sup>12</sup> As recommended by paragraph 13 of the 2006 Report.

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



### **Protection of right of prisoners to humane treatment<sup>14</sup>**

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

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

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

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

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

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

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

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

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

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

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<sup>14</sup> New provision suggested by section 4 of Mrs Richardson’s draft.

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

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

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

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

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

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

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

### **Protection from inhumane treatment**

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

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

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

- (a) prescribes the principles on which and the manner in which adequate compensation thereto is to be determined;
- (b) requires the prompt payment in money of such adequate compensation;<sup>15</sup>
- (c) prescribes the manner in which the compensation is to be given; and
- (d) the manner of enforcing the right to any such compensation.

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

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

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<sup>15</sup> As recommended by paragraph 17 of the 2006 Report.

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

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

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

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

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

**10.** (1) Every person has the right to respect for his private and family life, his home and his correspondence and, except with his own consent, no person shall be subjected to the search of his person or his property or the entry by others on his premises.<sup>16</sup>

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

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

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

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

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

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<sup>16</sup> Wording suggested by section 9 of Mrs Richardson's draft.

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

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

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

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

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

(ii) may be empowered or required by law to do so in the interests of defence, public safety, public order, public morality, the welfare of persons under the age of eighteen years or the protection of the private lives of persons concerned in the proceedings.<sup>17</sup>

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

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

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

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

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

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

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

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<sup>17</sup> This wording removes the previous provision for automatic exclusion of Chamber proceedings, as recommended by paragraph 19 of the 2006 Report.

(e) shall be permitted to have without payment the assistance of an interpreter if he cannot understand the English language; and

(f) shall, when charged on information or indictment in the High Court, have the right to trial by jury or before a judge sitting alone, as he may choose.<sup>18</sup>

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

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

(b) the court, being satisfied that no injustice will result, orders the trial to proceed in that person's absence on account of the abscondment or the involuntary illness or incapacity of that person.<sup>19</sup>

(8) No person shall be held to be guilty of a criminal offence on account of any act or omission which did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence which is severer in degree or description than the maximum penalty which might have been imposed for that offence at the time when it was committed.

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

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

(10) When a person is tried for any criminal offence, the accused person or any person authorised by him in that behalf shall, if he so requires and subject to payment of such reasonable fee as may be prescribed by law, be given within a reasonable time after

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<sup>18</sup> Amendment suggested by section 10 of Mrs Richardson's draft.

<sup>19</sup> Amendment suggested by section 10 of Mrs Richardson's draft.

judgment a copy for the use of the accused person of any record of the proceedings made by or on behalf of the court.

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

(12) When a person, has by a final decision of a court, been convicted of a criminal offence and, subsequently, his conviction has been quashed, or he has been pardoned, on the ground that a newly-disclosed fact shows that there has been a miscarriage of justice, he shall be compensated out of public funds for any punishment that he has suffered as a result of the conviction unless it is proved that the non-disclosure in time of that fact was wholly or partly his fault.<sup>20</sup>

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

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

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

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

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

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

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

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<sup>20</sup> Amendment suggested by section 10 of Mrs Richardson’s draft.



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

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

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

### **Protection of freedom of expression<sup>21</sup>**

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

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

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

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

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<sup>21</sup> Adapted from section 12 of Mrs Richardson's draft.

television or other means of communication or regarding public exhibitions or public entertainments;<sup>22</sup> or

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

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

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

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

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

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

- (a) that is reasonably required,

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

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

- (b) that imposes restrictions upon public officers:

Provided that,

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

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<sup>22</sup> Amendment suggested by section 12 of Mrs Richardson's draft.

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

**Protection from discrimination on the grounds of race, etc.<sup>23</sup>**

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

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

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

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

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

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

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

(d) for the provision of services in favour of Anguillians.<sup>24</sup>

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

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

<sup>24</sup> This subsection permitting discrimination in the provision of services in favour of Anguillians has been added to the recommendations of the 2006 Report at the request of Members of the House of Assembly in 2009.

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

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

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

(b) which is reasonably justifiable in a democratic society for the protection or well-being of women.<sup>25</sup>

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

### **Protection of the environment<sup>26</sup>**

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

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

(a) limit pollution and ecological degradation;

(b) promote conservation and biodiversity; and

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

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<sup>25</sup> A question has been asked whether discriminatory laws for the protection of women are still necessary. It is suggested that such matters as human trafficking of women for prostitution, protection of health in matters of family planning and pregnancy, genital mutilation, and other forms of violence against women justify retaining this exception.

<sup>26</sup> This provision is taken from section 18 of the Cayman Islands Constitution and section 18 of the TCI Constitution.

### **Protection of children<sup>27</sup>**

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

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

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

### **Protection of persons detained under emergency laws<sup>28</sup>**

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

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

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<sup>27</sup> This provision is taken from section 30 of the VI Constitution.

<sup>28</sup> This wording is taken from section 23 of Rev Niles' draft.

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

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

(3) Nothing contained in subsection (1)(d) or subsection (1)(e) of this section shall be construed as entitling a person to legal representation at public expense, except when the interests of justice so require.<sup>29</sup>

### **Enforcement of protective provisions**

**20.** (1) If any person alleges that any of the provisions of sections 3 to 17 (inclusive) of this Constitution has been, or is being, or is likely to be,<sup>30</sup> contravened in relation to him (or, in the case of a person who is detained, if any other person alleges such a contravention in relation to the detained person), then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the High Court for redress.

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

(3) The High Court shall not decline to exercise its powers under subsection (2) solely on the ground that it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law.<sup>31</sup>

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

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<sup>29</sup> Amendment suggested by section 16 of Mrs Richardson's draft.

<sup>30</sup> "or is likely to be" inserted as recommended by paragraph 26 of the 2006 Report.

<sup>31</sup> Amendment suggested by section 17 of Mrs Richardson's draft. Removes "other means of redress" as recommended by paragraph 27 of the 2006 Report.

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

(6) An appeal shall lie as of right to the court of Appeal from any final determination of any application or question by the High Court under this section, and an appeal shall lie as of right to Her Majesty in Council from the final determination by the Court of Appeal of the appeal in any such case.<sup>32</sup>

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

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

### **Declaration of emergency**

**21.** (1) The Governor may, after consultation with Cabinet and acting on its advice,<sup>33</sup> by Proclamation published in the manner provided in subsection (2), declare that a state of emergency exists for the purposes of this Chapter.

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

(3) Every declaration of emergency shall lapse-

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

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

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<sup>32</sup> Amendments suggested by section 17 of Mrs Richardson's draft.

<sup>33</sup> As recommended by paragraph 28 of the 2006 Report.

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

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

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

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

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

## **CHAPTER 2 INTERPRETATION**

### **Interpretation**

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

“Accountant General” means the officer established by section 122;

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

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

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

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

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

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

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

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

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



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

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

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

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

“disciplined force” means,

(a) a naval, military or air force;

(b) the Police Service; or

(c) a prison service;

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

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

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

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

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

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

“functions” includes jurisdictions, powers and duties;

“Gazette” means the Official Gazette of Anguilla;

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

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

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

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

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

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

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

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

“legal representative” means a licensed legal practitioner;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Her Majesty is at war; or

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

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

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

(7) In this Constitution, unless there is something in the subject or context inconsistent with such construction, or unless it is therein otherwise expressly provided, words importing the masculine gender includes the female gender.<sup>34</sup>

### **References to public office**<sup>35</sup>

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

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

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

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<sup>34</sup> Although it is the modern preference, it has proven to be unduly pedantic and cumbersome to replace “he”, “his” and “him” everywhere in the Constitution with “he or she”, “his or her”, and “him or her”.

<sup>35</sup> Wording taken from section 3 of the VI Constitution.

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

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

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

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

### **Appointments<sup>36</sup>**

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

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

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

### **Re-election or reappointment<sup>37</sup>**

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

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<sup>36</sup> Taken from section 4 of the VI Constitution.

<sup>37</sup> Wording taken from section 5 of the VI Constitution.

### **Removal from office<sup>38</sup>**

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

### **Resignation<sup>39</sup>**

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

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

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

## **CHAPTER 3 THE GOVERNOR**

### **The Governor<sup>40</sup>**

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

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

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

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

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<sup>38</sup> Wording taken from section 6 of the VI Constitution.

<sup>39</sup> Wording taken from section 7 of the VI Constitution.

<sup>40</sup> As recommended by paragraph 30 of the 2006 Report. The wording is taken from section 8 of the VI Constitution.

(5) The Premier and the Leader of the Opposition shall be consulted before the appointment of any person to the office of Governor.<sup>41</sup>

### **Office of Deputy Governor**

**30.** (1) There shall be a Deputy Governor who shall be such person, being an Anguillian<sup>42</sup> as defined in section 99 of this Constitution, as Her Majesty may designate as such by instructions given by Her Majesty through a Secretary of State and shall hold office during Her Majesty's pleasure.

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

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

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

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

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

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

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

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

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

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<sup>41</sup> As recommended by paragraph 30 of the 2006 Report.

<sup>42</sup> As recommended by paragraph 31 of the 2006 Report.

unable to perform the functions of the office of Deputy Governor, then such person being an Anguillian as Her Majesty may designate by instructions given through a Secretary of State shall act in the office of Deputy Governor during Her Majesty's pleasure,<sup>43</sup> subject to subsection (1).

### **Acting Governor**

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

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

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

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

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

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

### **Functions of Deputy Governor<sup>44</sup>**

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

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

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

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<sup>43</sup> Amended in accordance with section 36 of the VI Constitution.

<sup>44</sup> Wording taken from section 38 of the VI Constitution.

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

(2) The Deputy Governor shall be head of the public service and shall be responsible for the administration of any department of government, with respect to the terms and conditions of service of persons holding or acting in the Public Service or the Teaching Service, without prejudice to sections 84 and 85.<sup>45</sup>

### **Governor's deputy**

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

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

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

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

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

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

## **CHAPTER 4**

### **THE EXECUTIVE**

#### **Executive authority of Anguilla<sup>46</sup>**

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

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<sup>45</sup> Note that this wording makes it clear that responsibility for the administration of the public service is transferred to the Deputy Governor.

<sup>46</sup> Wording taken from section 26 of Mrs Richardson's draft.



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

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

### **Cabinet and government of Anguilla<sup>47</sup>**

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

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

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

(4) Upon the coming into effect of this Constitution, the Special Advisers Act shall be repealed.<sup>48</sup>

### **Appointment of Ministers**

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

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

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

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

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<sup>47</sup> Wording taken from section 27 of Mrs Richardson's draft. Note the absence from Cabinet of the Governor.

<sup>48</sup> With the increase of the number of Ministers to 6, there will be no need any longer for members of the Assembly to be employed as ministerial assistants.

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

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

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

**37.** (1) If a motion on the Order Paper that the Assembly should declare a lack of confidence in the Government of Anguilla receives in the Assembly the affirmative votes of a majority of all the elected members of the Assembly, the Governor shall, by instrument under the public seal, revoke the appointment of the Premier; but before so revoking the Premier's appointment the Governor shall consult with the Premier and, if the Premier so requests, the Governor, acting in his discretion, may dissolve the Assembly instead of revoking the appointment.<sup>49</sup>

(2) The Premier shall vacate his office if, after the polling in a general election and before the Assembly first meets thereafter, the Governor, acting in his discretion, informs him that he is about to appoint another person as the Premier. No one shall be appointed as Premier for a third consecutive term.<sup>50</sup>

(3) Any Minister shall vacate his office if,

- (a) he ceases to be a member of the Assembly for any reason other than a dissolution;
- (b) he is not an elected member of the Assembly when it first meets after a general election;
- (c) the Integrity Commission determines that he has breached the Code of Conduct for Persons in Public Life for the time being in effect;<sup>51</sup>
- (d) he is required under the provisions of section 58 of this Constitution to cease to perform his functions as a member of the Assembly; or
- (e) he resigns it by writing under his hand addressed to the Governor.

(4) A Minister other than the Premier shall also vacate his office if,

- (a) the Premier vacates his office; or

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<sup>49</sup> As recommended by paragraphs 45 and 46 of the 2006 Report. Taken from section 53(1) of the VI Constitution.

<sup>50</sup> It is the overwhelming preference of the public during the October 2016 consultations that the Premier should be limited in any future Constitution to a maximum of two consecutive terms.

<sup>51</sup> As recommended by paragraph 72 of the 2006 Report. Wording taken from section 34 of the TCI Constitution.

(b) his appointment is revoked by the Governor acting in accordance with the advice of the Premier, by instrument under the public seal.

(5) The Speaker shall give priority to any motion proposing a lack of confidence in the government which is lodged with him and any such motion shall be dealt with promptly and in event within one month.

### **Performance of functions of Premier in certain events<sup>52</sup>**

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

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

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

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

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

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

**39.** The Governor, acting in accordance with the advice of the Premier, shall, by directions in writing, assign to any Minister responsibility for the conduct (subject to the provisions of this Constitution and of any other law) of any business of the Government of Anguilla including responsibility for the administration of any department of government and shall likewise remove or amend any such assignment.

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<sup>52</sup> This section dealing with the Deputy Premier is taken from section 55 of the VI Constitution.

## **Attorney-General<sup>53</sup>**

**40.** (1) There shall be an Attorney-General of Anguilla appointed<sup>54</sup> by the Governor after consultation with the Premier and Leader of the Opposition, whose office shall be a public office and who shall be appointed in accordance with section 96 of this Constitution.

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

## **Director of Public Prosecutions<sup>55</sup>**

**41.** (1) There shall be a Director of Public Prosecutions, whose office shall be a public office and who shall be appointed in accordance with section 96 of this Constitution, provided that whenever the Attorney-General is a public officer he may perform the functions of the Director of Public Prosecutions.

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

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

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

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

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<sup>53</sup> As recommended by paragraph 70 of the 2006 Report. Wording taken from section 58 of the VI Constitution. A question has arisen whether there is a need at this time for a separate office of DPP in Anguilla. The risk of political interference in criminal prosecutions is greatest where the A-G is an elected Minister. Also, there might not be sufficient work for the foreseeable future to keep a DPP busy. In some Caribbean Countries, the section provides that when the Attorney-General is a public officer he may combine both functions of A-G and DPP, and this is provided for in the following section.

<sup>54</sup> Note that section 91(6) requires that preference should be given to Anguillians.

<sup>55</sup> As recommended by paragraph 71 of the 2006 Report. Wording taken from section 59 of the VI Constitution.

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

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

### **Governor's special responsibilities<sup>56</sup>**

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

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

and the Governor shall keep the Premier fully informed concerning the general conduct of these matters, and the Premier may request information in respect of any particular matter.<sup>57</sup>

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

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

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

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<sup>56</sup> Wording taken from section 60 of the VI Constitution, save that paragraph (1)(d) is transferred to the Deputy Governor at section 32(3).

<sup>57</sup> As recommended by paragraph 53 of the 2006 Report.

- (a) the Caribbean Community, the Organisation of Eastern Caribbean States, the Association of Caribbean States, the United Nations Economic Commission for Latin America and the Caribbean, or any other Caribbean regional organisation or institution;
  - (b) other Caribbean regional affairs relating specifically to issues that are of interest to or affect Anguilla;
  - (c) the relationship between Anguilla and St Maarten, St Martin,<sup>58</sup> and the United States Virgin Islands in matters of mutual interest;
  - (d) tourism and tourism-related matters;
  - (e) taxation and the regulation of finance and financial services; and
  - (f) European Union matters directly affecting the interests of Anguilla.
- (5) The terms and conditions referred to in subsection (4) are the following,
- (a) separate authority shall be required from or on behalf of a Secretary of State for the commencement of formal negotiation and the conclusion of any treaty or other international agreement by the Government of Anguilla, provided that general authority may be granted in specified matters to commence the formal negotiation of, and where it is deemed appropriate, to conclude any such treaty or international agreement;
  - (b) no political declaration, understanding or arrangement in the field of foreign policy shall be signed or supported in the name of the Government of Anguilla without the prior approval of a Secretary of State;
  - (c) a formal invitation to a member of government or Head of State of another country to visit Anguilla shall not be issued without prior consultation with the Governor;
  - (d) the costs of any activities in pursuance of subsection (4) shall be borne by the Government of Anguilla;
  - (e) the Premier or other Ministers shall keep the Governor fully informed of any activities in pursuance of subsection (4); and
  - (f) the Premier or other Minister shall provide to the Governor on request all papers and information, including the text of any instrument under negotiation, available to the Premier or other Minister with respect to any activities in pursuance of subsection (4).
- (6) Any matter that is delegated to the Premier or to any other Minister under subsection (4) shall be performed by the Premier or such other Minister in a manner that is in the

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<sup>58</sup> Note that St Maarten and St Martin are added to the provision in the VI Constitution.

best interests of Anguilla and not prejudicial to the interests of Her Majesty and, for this purpose, the Governor and the Premier shall from time to time hold conference to ensure the proper safeguard of those interests.

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

(8) Where the Governor, acting in his discretion, determines that the exercise of any function conferred on any other person or authority (other than the Assembly) would involve or affect any matter mentioned in subsection (1), the Governor may, acting after consultation with the Premier, give directions as to the exercise of that function, and the person or authority concerned shall exercise the function in accordance with those directions.<sup>59</sup>

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

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

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

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

**44.** The Premier may summon any public officer to a meeting of the Cabinet whenever the business before the Cabinet renders the presence of that officer desirable.<sup>60</sup>

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

**45.** (1) The Cabinet shall not be summoned except by the authority of the Premier, acting in his discretion.<sup>61</sup>

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

(2) No business shall be transacted at any meeting of the Cabinet unless there are four Ministers present including the person in the chair.<sup>62</sup>

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<sup>59</sup> Subsections (1) to (8) are taken from section 60 of the VI Constitution.

<sup>60</sup> As recommended by paragraph 66 of the 2006 Report.

<sup>61</sup> As recommended by paragraph 67 of the 2006 Report.

<sup>62</sup> As recommended by paragraph 68 of the 2006 Report.

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

### **Presiding in Cabinet**

**46.** (1) The Premier shall, so far as is practicable, attend and preside at meetings of the Cabinet.<sup>63</sup>

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

### **Cabinet Secretary<sup>64</sup>**

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

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

(3) The Cabinet Secretary shall,

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

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

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<sup>63</sup> As recommended by paragraph 69 of the 2006 Report.

<sup>64</sup> Wording taken with amendment from section 37 of the TCI Constitution. During the public consultations in October 2016, it was pointed out that each Premier will probably want his or her own appointee as Cabinet Secretary upon whom he or she can depend and whom he or she can trust. While the point is a good one, it is not thought by the Committee that it is appropriate to deal with the question of contracts for such an officer in the Constitution.



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

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

### **Public Seal**<sup>65</sup>

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

## **CHAPTER 5 THE PUBLIC SERVICE**

### **Public service general**

#### **Power to appoint, etc., to public offices**<sup>66</sup>

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

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

(b) the Deputy Governor,<sup>67</sup>

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

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

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

but the Deputy Governor, acting in his discretion, may act otherwise than in accordance with the advice pursuant to paragraphs (b) (i), (ii) and (iii) if he determines that compliance with that advice would prejudice Her Majesty's service,<sup>68</sup> provided that a reasoned statement is given.

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<sup>65</sup> Removed from the previous "Miscellaneous" Chapter.

<sup>66</sup> Wording taken with amendment from section 92 of the VI Constitution, amended to reflect the division of responsibilities for appointment to the public service, the police service, and the teaching service, between the Governor and the Deputy Governor as recommended by paragraphs 147-152 of the 2006 Report.

<sup>67</sup> As recommended by paragraphs 151 and 165 of the 2006 Report.

<sup>68</sup> The question has been asked if the meaning of "Her Majesty's service" is clear. Can it be further clarified?

(2) Before exercising the powers vested in the Deputy Governor by subsection (1), the Deputy Governor may, acting in his discretion, once refer the advice of the Teaching Service Commission, the Police Service Commission or the Public Service Commission along with a reasoned statement for reconsideration by it.

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

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

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

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

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

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

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

(10) This section does not apply to any office to which section 96 of this Constitution applies.<sup>69</sup>

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

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

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

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

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

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

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

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

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

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

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<sup>69</sup> Additional subsections (2) to (10) taken with amendment from section 92 of the VI Constitution.

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

**52.** (1) The power to grant any award under any pensions law in force in Anguilla (other than an award to which, under that law, the person to whom it is payable is entitled as of right), and, in accordance with any provisions in that behalf contained in any such law, to withhold, reduce in amount or suspend any award payable under any such law is hereby vested in the Governor acting in his discretion.

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

## **CHAPTER 6**

### **HOUSE OF ASSEMBLY**

#### **Composition of legislature and power to make laws<sup>70</sup>**

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

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

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

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

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

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

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

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

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<sup>70</sup> Adapted from section 63 of the VI Constitution. This version more clearly establishes that the House consists of 9 district representatives and 4 representatives elected at large.

### **Qualifications for elected membership<sup>71</sup>**

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

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

### **Disqualifications for elected membership<sup>72</sup>**

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

- (a) holds or is acting in any office of emolument in the service of the Crown;
- (b) is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law in force in any country;
- (c) is a person certified to be insane or otherwise adjudged to be of unsound mind under any law in force in Anguilla;
- (d) has been convicted by any court of law in any country of an offence of dishonesty or immorality;<sup>73</sup>
- (e) is a party to, or a partner in a firm or a director or manager of a company which is a party to, any contract with the Government and has not, by that date, disclosed in a notice to the Integrity Commission the nature of such contract and his interest, or the interest of such firm or company, in it;<sup>74</sup> or
- (f) is disqualified for membership of the Assembly by any law in force in Anguilla relating to offences connected with elections.

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

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<sup>71</sup> Retains the present qualifications of section 36 as recommended by paragraphs 82, 83 and 84 of the 2006 Report.

<sup>72</sup> Amended from the present provision of the 1982 Constitution in accordance with the recommendations at paragraphs 86-90 of the 2006 Report, to remove the disqualifications for ministers of religion, and persons with dual citizenship.

<sup>73</sup> As recommended by paragraph 90 of the 2006 Report.

<sup>74</sup> Wording taken from section 49(f) of the TCI Constitution.

## **Declaration by candidates for election to Assembly<sup>75</sup>**

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

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

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

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

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

- (a) upon a dissolution of the Assembly;
- (b) if, without prior notice to the Speaker,<sup>76</sup> he is absent from three consecutive meetings of the Assembly;
- (c) if he ceases to be resident in Anguilla;
- (d) if he resigns his/her seat by writing under his hand addressed to the Governor;
- (e) if any of the circumstances arise that, if he were not a member of the Assembly, would cause him to be disqualified for election thereto by virtue of any of paragraphs (a), (b), (c), (d), (e), or (f) of section 55 of this Constitution;
- (f) in the event of the receipt by the Speaker of any recall petition presented to him in accordance with the provisions of any Act regulating the recall procedure and signed to the satisfaction of the Speaker by at least two-thirds of the number of persons voting at the last election for that district;<sup>77</sup>

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<sup>75</sup> Wording taken from section 50 of the TCI Constitution.

<sup>76</sup> The previous provision for the Governor to receive notice dates back to the period when the Commissioner/Governor chaired meetings of the Assembly.

<sup>77</sup> Since 2015, and resulting from the “Expenses Scandal” there has been in the UK a power for voters to recall an MP. There appears to be a strong feeling in Anguilla that there ought to be a power of recall by the voters if a member of the Assembly loses the confidence of his or her electorate. One suggestion is that if a petition is sent to the Speaker signed by two-thirds of the number of registered voters that voted in the election, the Speaker should be required to declare the seat vacant and request the Governor to issue a writ of by-election for that district. A district may be one of nine into which the island is divided, or may be one of the proposed 4 at large seats. Any recall process would have to be governed by an Act which sets out the procedure to be followed. For the Constitution a simple enabling provision would be sufficient to allow such an Act to be passed in due course.

- (g) if he fails to file his declaration of interests as required by section 98 of this Constitution; or
- (h) in the circumstances specified in the next following section.

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

**58.** (1) Subject to the provisions of this section, if an elected Member is convicted by a court of law in any country of an offence of dishonesty or immorality, he shall forthwith cease to perform his functions as a member of the Assembly, and his seat in the Assembly shall become vacant at the expiration of a period of thirty days thereafter;<sup>78</sup>

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

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

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

### **Temporary members of Assembly**

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

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

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

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<sup>78</sup> Conviction of an offence of dishonesty or immorality replaces conviction and sentence for a term exceeding 12 months as recommended by paragraph 92 of the 2006 Recommendations.

## **Leader of the Opposition**<sup>79</sup>

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

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

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

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

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

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

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

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

## **Power to provide for a referendum**<sup>80</sup>

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

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<sup>79</sup> The present provision in section 40A of the 1982 Constitution, amended in accordance with the recommendation at paragraph 94 of the 2006 Report.

<sup>80</sup> Wording taken from section 69 of the Cayman Islands Constitution.



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

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

### **People-initiated referendums<sup>81</sup>**

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

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

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

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

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

**63.** (1) Any question whether a person has been validly appointed as a temporary member of the Assembly, or whether a temporary member of the Assembly has vacated his seat therein,<sup>82</sup> shall be determined by the Governor acting in his discretion.

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

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<sup>81</sup> Wording taken from section 70 of the Cayman Islands Constitution.

<sup>82</sup> The words “or is required by virtue of section 58 of this Constitution to cease to perform his functions as a member” are deleted as being in conflict with subsection (2), where the provision more appropriately belongs.

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

**Penalty for sitting or voting in Assembly when unqualified<sup>83</sup>**

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

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

**Qualification of voters**

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

- (a) is an Anguillian;<sup>84</sup> and
- (b) has been ordinarily resident<sup>85</sup> in Anguilla for a period of not less than three years immediately before the qualifying date.

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<sup>83</sup> As recommended by paragraphs 97-100 of the 2006 Report.

<sup>84</sup> As recommended by paragraphs 102-103 of the 2006 Report.

<sup>85</sup> As recommended by paragraph 104 of the 2006 Report.

(2) No person shall be qualified to be registered as a voter who,

- (a) is under sentence of death imposed on him by a court of law in any country or is under a sentence of imprisonment (by whatever name called) exceeding twelve months imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court, provided that the acts constituting the offence for which such sentence was imposed would, if committed in Anguilla, have constituted an offence under the law of Anguilla;
- (b) is a person certified to be insane or otherwise adjudged to be of unsound mind under any law in force in Anguilla; or
- (c) is disqualified for registration as a voter by any law in force in Anguilla relating to offences connected with elections.

(3) For the purposes of paragraph (a) of the preceding subsection,

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

(4) Within six months after the coming into effect of this Constitution, and at such times thereafter as the Governor may by Proclamation direct,<sup>86</sup> a new List of Voters qualified under this Constitution shall be prepared by an enumeration process to be provided for in a law governing the registration of voters and thereupon the existing List of Voters shall become void. Thereafter, the List of Voters shall be constantly updated by a process of continuous registration of qualified new voters.<sup>87</sup>

### **Laws as to elections**

**66.** Subject to the provisions of this Constitution, the Assembly may provide<sup>88</sup> for the election of members of the Assembly, including (without prejudice to the generality of the foregoing power) the following matters, that is to say,

- (a) the qualifications and disqualifications of voters;

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<sup>86</sup> It is intended that no person should be entitled to remain permanently on the List of Voters, as presently obtains, no matter how long he has ceased to reside in Anguilla. The intention is that the new Elections Act should provide that periodically, eg, after every ten-year census, there should be a new enumeration process.

<sup>87</sup> This provision is designed to authorise preparation of a new List of Voters who are qualified under the new test of "ordinary residence" in Anguilla.

<sup>88</sup> The present law is the Elections Act c E030 as amended. The regulations are the Elections Registration Regulations and the House of Assembly Elections Regulations. These will need to be replaced or amended. In particular, in accordance with the recommendation at paragraph 76 of the 2006 Report, the Elections Act should provide for 9 members to represent constituencies and 4 to be elected at-large

- (b) the registration of voters;
- (c) the ascertainment of the qualification of voters and of candidates for election;
- (d) the holding of elections generally, including a fixed date for the holding of general elections;<sup>89</sup>
- (e) the determination of any question whether any person has been validly elected a member of the Assembly or whether the seat of any elected member in the Assembly has become vacant;
- (f) the definition and trial of offences connected with elections and the imposition of penalties therefor, including the disqualification for membership of the Assembly, or for registration as a voter or for voting at elections, of any person concerned in any such offence;
- (g) the disqualification for election as members of the Assembly of persons holding or acting in any office the functions of which involve any responsibility for, or in connection with, the conduct of any election or the compilation or revision of any electoral register; and
- (h) the regulation of campaign funding.<sup>90</sup>

### **Elected members**<sup>91</sup>

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

(2) Subject to section 53(3) of this Constitution, for the purposes of elections, Anguilla,

- (a) shall be a single electoral district and shall return not less than four members to the Assembly; and
- (b) shall also be divided into not less than nine electoral districts in such manner as may be provided by or under any law for the time being in force in Anguilla, and each such district shall return one member to the Assembly.

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<sup>89</sup> During the October 2016 public consultations, there was widespread agreement on the need for the new Constitution to provide for a fixed date for general elections.

<sup>90</sup> As recommended by paragraph 80 of the 2006 Report.

<sup>91</sup> Taken and adapted from section 64 of the VI Constitution. As with the BVI, it is proposed that Anguilla be divided into at least 9 districts and there also be at least 4 members at large. Once the new draft Elections Act is passed into law the Governor should proceed to appoint the Electoral Boundaries Commission to carry out its work prior to the adoption of this new Constitution which will then give a constitutional guarantee for this process.

## CHAPTER 7

### POWERS AND PROCEDURE IN THE HOUSE OF ASSEMBLY<sup>92</sup>

#### Standing Orders and committees

68. (1) Subject to this Constitution, the Assembly may from time to time make, amend and revoke Standing Orders for the regulation and orderly conduct of its own proceedings and the dispatch of business, and for the passing, intituling and numbering of bills and for their presentation to the Governor for assent.<sup>93</sup>

(2) Standing Orders must provide for fair procedures, adequate notice of bills and motions, and a sufficient opportunity for members of the Assembly (including opposition members) to speak and otherwise participate in the proceedings of the Assembly.

(3) Standing Orders shall not be suspended or revoked without good reason.

(4) In any matter not provided for in Standing Orders, resort shall be had to the usage and practice of the House of Commons of the United Kingdom, which shall be followed as far as the same may be applicable to the Assembly and not inconsistent with Standing Orders nor with the practice of the Assembly.

(5) In cases of doubt, Standing Orders shall be interpreted in the light of the relevant usage and practice of the House of Commons, but no restriction which the House of Commons has introduced by standing order after the making of such Standing Orders shall be deemed to extend to the Assembly or its members until the Assembly has by Standing Orders provided for such restriction.

(6) Standing Orders shall make provision for the establishment of a Finance Committee of the Assembly to consider in detail the estimates of revenue and expenditure of Anguilla laid before the Assembly by the Minister responsible for finance, and to examine and consider all financial bills and such other matters relating to the finances of Anguilla as may from time to time be referred to it by the Assembly and to report on them to the Assembly.

(7) The Finance Committee shall consist of all the elected members of the Assembly and shall be chaired by the Minister responsible for finance.

(8) Standing Orders may also establish one or more other standing committees of the Assembly, each of which may be charged with responsibility for monitoring the conduct

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<sup>92</sup> This Chapter in the 1982 Constitution commenced with section 47 which provided that the power to make laws for Anguilla vested in the Governor acting “with the advice and consent” of the Assembly. This provision is no longer repeated as being inappropriate in this day, and is replaced by new section 53 which provides that the Legislature for Anguilla consists of Her Majesty and a House of Assembly.

<sup>93</sup> The previous provision for the Governor to approve Standing Orders is deleted, since it is not appropriate for a Governor to have a say in the Standing Orders of a House of Assembly.

of business of the Government for which responsibility has been assigned to a Minister under section 39 of this Constitution.

### **Presiding in Assembly**

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

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

(3) When the Assembly first meets after a general election and before it proceeds to the dispatch of any other business except the election of the Speaker, it shall elect a member of the Assembly other than an elected member to be Deputy Speaker of the Assembly; and if the office of Deputy Speaker falls vacant for any reason other than a dissolution of the Assembly, the Assembly shall, as soon as convenient, elect another such member to that office.

(4) A person shall vacate the office of Speaker or Deputy Speaker,

(a) on dissolution of the Assembly;

(b) if he resigns his office by written notice to the Governor;

(c) if a motion for his removal from office receives in the Assembly the affirmative votes of two-thirds of all the members thereof;

(d) if, being a member of the Assembly, he ceases to be a member for any reason other than a dissolution of the Assembly or if, by virtue of section 58 of this Constitution, he is required to cease to perform his functions as a member;

(e) in the case of the Speaker,

(i) if he becomes a member of the Cabinet;

(ii) if, not being a member of the Assembly, any circumstances arise that would cause him to be disqualified for election as a member of the Assembly by virtue of section 55(1) of this Constitution.

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

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

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

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

### **Quorum**

**71.** (1) If at any sitting of the Assembly a quorum is not present and any member of the Assembly who is present objects on that account to the transaction of business and, after such interval as may be prescribed in the Standing Orders of the Assembly, the person presiding at the sitting ascertains that a quorum is still not present, he shall adjourn the Assembly.

(2) For the purposes of this section a quorum shall consist of a simple majority of the elected members of the Assembly.

### **Voting**

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

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

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

**73.** (1) The Speaker or other person presiding may, when in his opinion the business before the Assembly makes it desirable, summon any person to a meeting of the Assembly or to any committee of the Assembly notwithstanding that that person is not a member of the Assembly.<sup>94</sup>

(2) Any person so summoned shall be entitled to take part as if he was a member in the proceedings of the Assembly or of the committee of the Assembly relating to the matter in respect of which he was summoned, except that he may not vote.

### **Introduction of bills**

**74.** (1) Subject to the provisions of this Constitution and of any Standing Orders of the Assembly, any member may introduce any bill or propose any motion for debate in, or may present any petition to, the Assembly, and the same shall be debated and disposed of according to the Standing Orders of the Assembly.

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<sup>94</sup> As recommended by paragraph 125 of the 2006 Report.

- (2) Except on the recommendation of the Minister of Finance,<sup>95</sup> the Assembly shall not,
- (a) proceed upon any bill (including any amendment to a bill) which in the opinion of the person presiding in the Assembly, makes provision for imposing or increasing any tax, for imposing or increasing any charge on the revenues or other funds of Anguilla or for altering any such charge otherwise than by reducing it or for compounding or remitting any debt due to Anguilla;
  - (b) proceed upon any motion (including any amendment to a motion) the effect of which, in the opinion of the person presiding in the Assembly, is that provision would be made for any of the purposes aforesaid; or
  - (c) receive any petition which, in the opinion of the person presiding in the Assembly, requests that provision be made for any of the purposes aforesaid.

### **Assent to bills**

**75.** (1) A bill shall not become a law until,

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

(2) When a bill is presented to the Governor for assent the Governor shall declare that he assents to it or that he reserves the bill for the signification of Her Majesty's pleasure; but unless the Governor has been authorised by a Secretary of State to assent to it, the Governor shall reserve for the signification of Her Majesty's pleasure any bill which appears to him, acting in his discretion,

- (a) to be inconsistent with any obligation of Her Majesty or of Her Majesty's Government in the United Kingdom towards any other state or power or any international organisation;
- (b) to be likely to prejudice the Royal Prerogative; or
- (c) to be in any way repugnant to or inconsistent with this Constitution.<sup>96</sup>

### **Return of bills by Governor<sup>97</sup>**

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

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<sup>95</sup> As recommended by paragraph 128 of the 2006 Report. Taken with amendment from section 78(2) of the VI Constitution.

<sup>96</sup> Wording taken from section 79(2) of the VI Constitution.

<sup>97</sup> As recommended by paragraph 132 of the 2006 Report.



(2) If the Assembly, having considered the amendment proposed by the Governor under subsection (1), substitutes for it a different amendment, subsection (1) shall apply to that different amendment as it applied to the original bill.

(3) The Governor shall assent to the bill on its being returned to him for his assent a second time, with or without the amendment having been accepted.

### **Standing Committees<sup>98</sup>**

**77.** (1) The Assembly shall establish at least two Standing Committees of the House, one of which shall be the Appropriations Committee established under section 121 of this Constitution and the other the Public Accounts Committee established by section 123 of this Constitution, and each of which shall be charged with responsibility for monitoring the conduct of business of the Government for which responsibility has been assigned to a Minister or Ministers under section 39 of this Constitution.

(2) Each Standing Committee shall consist of members of the Assembly who are not Ministers.

(3) The composition of each Standing Committee shall, so far as possible, ensure that the representation of political parties in the Committee is proportionate to the numerical strength of those parties in the Assembly.

(4) Each Standing Committee shall have power,

(a) to summon any Minister, or any public officer of a ministry or department of government for which a Minister or the Governor is responsible, to appear before it;

(b) subject to any law or Standing Orders, to require any person so summoned to testify on oath and provide information about the conduct of business of the Government by the Minister, ministry or department concerned;

(c) to report upon its activities to the Assembly.

(5) For the purposes of effectively performing its functions a standing or other committee may summon any person the committee believes may assist the committee in the performance of its functions and the committee shall have the powers, rights and privileges of the Supreme Court for,

(a) enforcing the attendance of witnesses and examining them on oath, affirmation or otherwise;

(b) compelling the production of documents; and

(c) issuing a commission or request to examine a witness abroad.

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<sup>98</sup> Adapted from section 64 of the TCI Constitution.

(6) Each Standing Committee shall be presided over by a member of the Assembly in opposition to the Government, save as otherwise provided in this Constitution.

(7) The Assembly shall publish reports submitted to it under subsection (4).

(8) Subject to the foregoing provisions of this section, Standing Orders shall provide for the composition and functions of, and proceedings and conduct of business before, Standing Committees.

### **Oath of allegiance**

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

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

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

**79.** A law enacted under this Constitution may determine and regulate the privileges, immunities and powers of the Assembly and its members, but no such privileges, immunities or powers shall exceed those of the Commons' House of Parliament of the United Kingdom or of the members thereof.<sup>99</sup>

### **Sessions**

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

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

### **Prorogation and dissolution**

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

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

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

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<sup>99</sup> The present Act is the House of Assembly (Powers and Privileges) Act, RSA c H015, which will need to be revised and updated on the adoption of this Constitution.

## **General elections**

**82.** (1) After the coming into effect of this Constitution, there shall be general elections on the first Monday after the 5th anniversary of the last general election.<sup>100</sup>

(2) The polling day for each subsequent general election is to be the first Monday after the 5th anniversary of the previous general election.

(3) The Governor acting on the advice of the Chief Minister may by order made by statutory instrument provide that the polling day for a general election in a specified calendar year is to be later than the day determined under subsections (1) or (2), but not more than two months later.

(4) A statutory instrument containing an order under subsection (3) shall not be made unless a draft has been laid before and approved by a resolution of the House of Assembly.

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

(6) An early general election is to take place if the House of Assembly passes a motion of no confidence in the government.

(7) If a general election is to take place as provided for by subsection (6), the polling day for the election is to be the day appointed by the Governor under a law governing elections.

## **CHAPTER 8**

### **THE JUDICATURE<sup>101</sup>**

#### **Eastern Caribbean Supreme Court**

**83.** The Supreme Court Order 1967 shall continue to apply to Anguilla as it applied immediately before the commencement of this Constitution, and accordingly the High Court and the Court of Appeal of the Eastern Caribbean Supreme Court shall continue to have jurisdiction in Anguilla.

#### **Subordinate courts and tribunals**

**84.** There shall be such courts and tribunals in and for Anguilla subordinate to the Eastern Caribbean Supreme Court, and such courts and tribunals shall have such jurisdiction and powers as may be prescribed by any law for the time being in force in Anguilla.

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<sup>100</sup> This provision creates a fixed date for elections, strongly favoured by the public during the October 2016 consultations over the draft new Constitution. The wording is taken from the UK Act.

<sup>101</sup> This provision taken from Chapter 6 of the VI Constitution.

## **Appeals to Her Majesty in Council<sup>102</sup>**

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

- (a) final decisions, in any civil or criminal proceedings, on questions as to the interpretation of this Constitution;
- (b) final decisions in any civil proceedings where the matter in dispute on the appeal is of the value of EC\$2,500 or upwards or where the appeal involves, directly or indirectly a claim to or a question respecting property or a right of the value of EC\$2,500 or upwards;
- (c) final decisions in proceedings under section 18 of this Constitution;
- (d) final decisions in proceedings for dissolution or nullity of marriage; and
- (e) in such other cases as may be prescribed by the Assembly.

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

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

- (b) in such other cases as may be prescribed by the Assembly.

(3) The foregoing provisions of this section shall be subject to the provisions of section 63(2) of this Constitution.

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

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

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<sup>102</sup> Adapted from section 78 of Mrs Richardson's draft. This is removed from the previous "Miscellaneous" Chapter.

## CHAPTER 9

### INSTITUTIONS PROTECTING GOOD GOVERNANCE

#### **Electoral District Boundary Commission**<sup>103</sup>

**86.** (1) An Electoral District Boundary Commission (in this section referred to as a “Commission”) shall be appointed from time to time at such time as the Governor, after consultation with the Premier and the Leader of the Opposition, may determine; but a Commission shall be appointed not later than ten<sup>104</sup> years after the last Commission submitted its report under section 87 of this Constitution.

(2) A Commission shall consist of,

- (a) a Chairman, being a person who is Anguillian, appointed by the Governor, acting in his discretion.
- (b) a member appointed by the Governor, acting in accordance with the advice of the Premier; and
- (c) a member appointed by the Governor, acting in accordance with the advice of the Leader of the Opposition.

(3) A person shall not be qualified to be appointed as a member of the Commission if he is a member of the Assembly or a public officer other than the holder of a judicial office.

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

(5) The Chairman or other member of a Commission shall vacate his office,

- (a) on the day following the submission of the report of the Commission under section 87 of this Constitution;
- (b) if any circumstances arise that, if he were not a member, would cause him to be disqualified for appointment as such; or
- (c) if the Governor, acting in his discretion, directs that he shall be removed from office for inability to discharge the functions of his office (whether arising from infirmity of body or mind or from any other cause) or for misbehaviour.

#### **Review and alteration of electoral district boundaries**<sup>105</sup>

**87.** (1) An Electoral District Boundary Commission shall, as soon as practicable after its appointment under section 86 of this Constitution, review the electoral district boundaries into which Anguilla is divided and, taking into account the changes or

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<sup>103</sup> As recommended by paragraph 77 of the 2006 Report. Taken with amendment from section 57 of the TCI Constitution.

<sup>104</sup> Altered to “ten” from “four” in the original to reflect the intention that the Commission should review the boundaries after every ten-year census.

<sup>105</sup> Wording taken from section 61 of the TCI Constitution, 2011.

proposed changes, if any, in the number of electoral districts, shall submit a report to the Governor and the Assembly containing its recommendations for any changes in the number and boundaries of the electoral districts.

(2) In determining its recommendations under this section, a Commission shall seek to ensure that electoral districts contain, so far as is reasonably practicable, approximately equal numbers of persons qualified to be registered as voters under section 65 of this Constitution and based on any last previous national census findings or report; but a Commission may depart from this principle to such extent as it considers expedient in order to take into account,

- (a) the density of population and, in particular, the need to ensure adequate representation of sparsely populated areas;
- (b) the means of communication;
- (c) geographical features.

(3) As soon as may be after a Commission has submitted a report under this section, the Governor shall cause a bill to be introduced into the Assembly for giving effect, whether with or without modifications, to the recommendations contained in the report; and such a bill,

- (a) may contain provisions for any matters which are incidental to or consequential upon its principal provisions; and
- (b) shall include a provision for the coming into force of the measure when enacted for the determination of the electoral districts to which it relates upon the next dissolution of the Assembly after enactment.

(4) Where any bill introduced under this section proposes to give effect to the recommendations with modifications, there shall be laid before the Assembly at the same time a statement of the reasons for the modifications.

### **Public Service Commission**<sup>106</sup>

**88.** (1) There shall be in and for Anguilla a Public Service Commission which shall consist of five members of whom,

- (a) three shall be appointed by the Deputy Governor,<sup>107</sup> acting in his discretion, and

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<sup>106</sup> As recommended by paragraphs 60 and 141-146 of the 2006 Report. Adapted from section 91 of the VI Constitution, to exclude consultation with teachers and the police who are otherwise represented by their own Commissions).

<sup>107</sup> The original wording of the VI draft amended to reflect the reality that the Deputy Governor is the effective head of the public service.

(b) two shall be appointed by the Deputy Governor, acting after consultation with the public service staff associations, other than those representing teachers or the police.

(2) A quorum shall be four members.

(3) The Public Service Commission shall advise the Deputy Governor on all matters of appointment, disciplining and remuneration of public servants in the government of Anguilla.<sup>108</sup>

### **Teaching Service Commission**<sup>109</sup>

**89.** (1) There shall be in and for Anguilla a Teaching Service Commission which shall consist of three members, of whom,

(a) two shall be appointed by the Deputy Governor, acting in his discretion;

(b) one shall be appointed by the Deputy Governor, acting after consultation with the Anguilla Teachers Union.

(2) A quorum shall be two members.

(3) The Teaching Service Commission shall advise the Deputy Governor on all matters of appointment, disciplining and remuneration of teachers in the government of Anguilla.

### **Police Service Commission**<sup>110</sup>

**90.** (1) There shall be in and for Anguilla a Police Service Commission which shall consist of five members, of whom,

(a) two shall be appointed by the Deputy Governor, acting in his discretion;

(b) one shall be appointed by the Deputy Governor, acting in accordance with the advice of the Premier;

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

(d) one shall be appointed by the Deputy Governor, acting after consultation with the Police Welfare Association.

(2) A quorum shall be four members.

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<sup>108</sup> Here and in sections 89 and 90, the concluding words, “and shall act in accordance with any Act, and shall have such functions and jurisdiction as may be prescribed by or under any such Act” deleted as being a duplication of the provision in section 103.

<sup>109</sup> Wording taken from section 93 of the VI Constitution.

<sup>110</sup> As recommended by paragraph 63 of the 2006 Report. Wording taken from section 96 of the VI Constitution. During the public consultations in October 2016 there were recommendations that there be provision for a chaplain for the police service, as the chaplain served as a mediator and counsellor for the service. While the Committee consider the appointment of a chaplain a positive idea, it is not considered that this is a matter for the Constitution, but for the Police Act.

(3) Subject to section 91 of this Constitution, the Police Service Commission shall advise the Deputy Governor on all matters of appointment, disciplining and remuneration of police officers in the government of Anguilla.

**Power to appoint, etc., to offices in the Police Service<sup>111</sup>**

**91.** (1) Power to make appointments to offices in the Police Service up to the rank of Inspector and to remove and to exercise disciplinary control over persons holding or acting in such offices shall vest in the Deputy Governor, acting in accordance with the advice of the Police Service Commission appointed in accordance with section 90 of this Constitution; but the Deputy Governor, acting in his discretion, may act otherwise than in accordance with that advice if he determines that compliance with that advice would prejudice Her Majesty's service.

(2) Where the Police Service Commission advises that any person should be appointed to an office in the Police Service of a rank superior to Inspector, that advice shall require the approval of the National Security Commission before being submitted to the Governor; but the Governor, acting in his discretion, may act without the approval of the National Security Commission if he determines that to do otherwise would prejudice Her Majesty's service.

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

(4) If the Police Service Commission, having reconsidered its original advice under subsection (3) substitutes for it different advice, subsection (3) shall apply to that different advice as it applies to the original advice.

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

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<sup>111</sup> Wording taken from section 97 of the VI Constitution.



## **National Security Commission**<sup>112</sup>

**92.** (1) There shall be for Anguilla a National Security Commission which shall consist of,

- (a) the Governor, as Chairman;
- (b) the Deputy Governor;
- (c) the Premier;
- (d) one other Minister appointed in writing by the Governor, acting in accordance with the advice of the Premier;
- (e) the Attorney-General, *ex officio*; and
- (f) the Commissioner of Police, *ex officio*.

(2) A Minister appointed under subsection (1)(c) shall vacate his seat on the National Security Commission if,

- (a) his seat becomes vacant under section 37 of this Constitution; or
- (b) the Governor so directs in writing, acting in accordance with the advice of the Premier.

(3) the National Security Commission shall advise the Governor on matters relating to internal security and the Governor shall be obliged to act in accordance with the advice of the Commission, unless he considers that giving effect to the advice would adversely affect Her Majesty's interest (whether in respect of the United Kingdom or Anguilla); and where the Governor has acted otherwise than in accordance with the advice of the Commission, he shall report to the Commission at its next meeting.

(4) The Commissioner of Police shall,

- (a) provide regular briefings to the National Security Commission on matters of internal security, including the Police Service;
- (b) have responsibility for the day to day operation of the Police Service and shall report regularly on such matters to the Governor; and
- (c) inform the Premier of any significant security developments in Anguilla, including the occurrence of any significant criminal activity.

(5) The National Security Commission may invite any person or summon any public officer to attend and participate in, or provide briefings to, the Commission on the areas of their work bearing on internal security.

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<sup>112</sup> As recommended by paragraph 179 of the 2006 Report. Wording taken from section 57 of the VI Constitution, and amended to include the Deputy Governor.

(6) The Governor, acting in his discretion, may summon a meeting of the National Security Commission whenever he considers it desirable to do so, and the Governor shall summon such a meeting whenever the Premier so requests.

(7) Subject to this section, the National Security Commission may regulate its own procedure.

(8) The Cabinet Secretary shall be the Secretary to the National Security Commission.

(9) The quorum for meetings of the Commission shall be four.

### **Financial Services Commission**<sup>113</sup>

**93.** There shall be for Anguilla a Financial Services Commission which shall be established as a body corporate with perpetual succession and a corporate seal and which shall be responsible for the regulation of the international financial services industry<sup>114</sup> and having such specific functions and powers and a board to be appointed by the Governor all as may be set out in a law.

### **Appointments Commission**

**94.** (1) There shall be in and for Anguilla an Appointments Commission which shall consist of three members, of whom –

- (a) one shall be appointed by the Governor, acting in his or her discretion;
- (b) one shall be appointed by the Governor, acting in accordance with the advice of the Premier;
- (c) one shall be appointed by the Governor, acting in accordance with the advice of the Leader of the Opposition; and

(2) A quorum shall be two members.

(3) No person may be appointed to any government-controlled board, committee or commission not subject to its own separate legislation save with the approval of the Appointments Commission.

(4) The Appointments Commission shall act in accordance with any Act, and shall have such functions and jurisdiction as may be prescribed by or under any such Act.

### **Judicial and Legal Services Commission**<sup>115</sup>

**95.** (1) There shall be for Anguilla a Judicial and Legal Services Commission which shall consist of,

- (a) the Chief Justice, who shall be Chairman;

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<sup>113</sup> As recommended by paragraph 58 of the 2006 Report.

<sup>114</sup> As recommended by paragraph 56 of the 2006 Report.

<sup>115</sup> The additional subsections taken from section 94 of the VI Constitution.

- (b) another judge of the Court of Appeal or the High Court nominated by the Chief Justice after consultation with the Governor;
- (c) the Chairman of the Public Service Commission; and
- (d) two other members appointed by the Governor, acting in accordance with the advice of the Premier and the Leader of the Opposition who will each nominate one member, at least one of whom shall be a legal practitioner.

(2) For the purpose of subsection (1)(d), the Premier and the Leader of the Opposition shall alternate in nominating a legal practitioner, with the Premier making the first such nomination upon the commencement of this Constitution, provided that such nomination shall not be construed as precluding the nomination of two legal practitioners under subsection (1)(d).

(3) If the office of a member of the Judicial and Legal Services Commission appointed under subsection (1)(d) becomes vacant or if such a member is for any reason unable to perform the functions of that office, the Governor acting in accordance with the advice of the Premier or the Leader of the Opposition, as the case may be, may appoint another suitably qualified person to that office for the unexpired term of the previous holder of the office or until the holder of the office is able to resume his functions.

(4) Any decision of the Judicial and Legal Services Commission shall require the concurrence of not less than three members of the Commission, and the Commission shall take its decisions in such form and manner as it may determine.

**Power to appoint, etc., to legal offices**<sup>116</sup>

**96.** (1) Power to make appointments to the offices to which this section applies, and to remove and to exercise disciplinary control over persons holding or acting in such offices, shall vest in the Governor, acting in accordance with the advice of the Judicial and Legal Services Commission appointed under section 90 of this Constitution; but the Governor, acting in his discretion, may act otherwise than in accordance with that advice if he determines that compliance with that advice would prejudice Her Majesty's service.

(2) Before exercising the powers vested in the Governor by subsection (1), the Governor may, acting in his discretion, once refer the advice of the Judicial and Legal Services Commission back to the Commission for reconsideration by it.

(3) If the Judicial and Legal Services Commission having reconsidered its original advice under subsection (2), substitutes for it different advice, subsection (2) shall apply to that different advice as it applies to the original advice.

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<sup>116</sup> Wording taken from section 95 of the VI Constitution.

(4) This section applies to the offices of,

(a) Attorney-General;

(b) Director of Public Prosecutions;

(c) Magistrate;

(d) any office in the public service of the Attorney-General's Chambers or of any Registrar or other officer of the High Court who is required to possess legal qualifications;

and to such other offices in the public service, for appointment to which persons are required to possess legal qualifications, as may be prescribed by any law or Government policy for the time being in force in Anguilla.

(5) No person shall be appointed to the office of Attorney-General unless he is qualified to be admitted in Anguilla as a legal practitioner and has had at least ten years' practical experience as a legal practitioner.

(6) No person shall be appointed to the office of Attorney-General unless he is an Anguillian unless, in the opinion of the Judicial and Legal Services Commission, there is no Anguillian who is suitably qualified and able and willing to be so appointed.

(7) No person shall be appointed to the office of Director of Public Prosecutions unless he is qualified to be admitted in Anguilla as a legal practitioner and has had at least seven years' practical experience as a legal practitioner.

(8) A person qualified under subsection (7) shall be appointed to act in the office of Director of Public Prosecutions whenever the office falls vacant and until a person is appointed substantively to that office, or whenever the holder of that office is for any reason unable to perform his functions (including by reason of suspension under subsection (10)).

(9) A person holding the office of Attorney-General, Director of Public Prosecutions, Chief Magistrate or Magistrate, for such period as may be specified in the instrument by which he is appointed, may only be removed from office for inability to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour.

(10) Where the issue of the removal of the Director of Public Prosecutions from office has been referred to the Judicial and Legal Services Commission, the Governor shall suspend the Director of Public Prosecutions from performing the functions of his office pending the outcome of the referral.

## **Integrity Commission<sup>117</sup>**

**97. (1)** The Integrity Commission shall consist of,

- (a) a Chairman, being a person qualified for judicial office, appointed by the Governor, acting in his discretion.
- (b) a member appointed by the Governor, acting in accordance with the advice of the Premier; and
- (c) a member appointed by the Governor, acting in accordance with the advice of the Leader of the Opposition.

(2) A person shall not be qualified to be appointed as a member of the Commission if he is a member of the Assembly or a public officer other than the holder of a judicial office.

(3) The primary responsibility of the Integrity Commission shall be to promote integrity, honesty and good faith in public life in Anguilla.<sup>118</sup>

(4) The Integrity Commission shall,

- (a) have and exercise the functions conferred on it by sections 37, 55, 98 and 126 of this Constitution;
- (b) formulate and publish, after public consultation in Anguilla, a Code of Conduct for Persons in Public Life, keep the Code under review and amend or replace it as it considers necessary or desirable, and, in accordance with any law, investigate any alleged failures to abide by the Code by persons subject to it, either in response to a complaint or on its own initiative;
- (c) contribute to public education about integrity in public life; and
- (d) have and exercise such other functions, for the purpose of fulfilling its primary responsibility under subsection (2), including the imposition of penalties, as may be conferred on it by law.

(5) A quorum for meetings of the Commission shall be two.

(6) The Integrity Commission shall make an annual report to the Assembly about its activities, and shall send a copy of each report to the Governor who shall ensure that any such report is published and made widely available.

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<sup>117</sup> In accordance generally with paragraph 135 of the 2006 Report. The wording is taken from sections 102 and 103 of the TCI Constitution. Note that subsection (5) of the TCI precedent is omitted as being a duplication of section 103.

<sup>118</sup> The Public Service Integrity Board's functions will become redundant. The PSIB Act will need to be repealed.

## **Registration of interests**<sup>119</sup>

**98.** (1) There shall be for Anguilla a Register of Interests, which shall be a public document published on a government website and otherwise made generally available to public scrutiny and maintained by the Integrity Commission.

(2) It shall be the duty of any person to whom this section applies to declare to the Integrity Commission, for entry in the Register of Interests, such interests, assets, income and liabilities of that person, or of any other person connected with him, as may be prescribed by law.

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

(4) This section applies immediately upon the coming into effect of this Constitution to all members of the Assembly (including Ministers) and subsequently to the holders of such other offices (except that of Governor) as may be prescribed by law.

(5) A law made by the Assembly shall make provision for giving effect to this section, including the sanctions which may be imposed for failure to comply with, or the making of false statements in purported compliance with, subsections (2) and (3).

## **Anguillian Status Commission**<sup>120</sup>

**99.** (1) There shall be an Anguillian Status Commission for the purpose of granting Anguillian status<sup>121</sup> under the provisions of this Constitution with such functions and membership<sup>122</sup> as may be set out in a law.<sup>123</sup>

(2) For the purposes of this Constitution, a person is an Anguillian if that person is,<sup>124</sup>

- (a) a person born or adopted in or outside of Anguilla with a parent or grandparent who was born or adopted in Anguilla and who is regarded as being Anguillian by virtue of this or any previous Constitution;
- (b) a person with a great-grandparent who was born in Anguilla and who is regarded as being Anguillian by virtue of this or any previous Constitution,

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<sup>119</sup> Adapted from section 112 of the VI Constitution

<sup>120</sup> Wording taken from section 89 of the draft Constitution prepared by Rev Niles as a substitute for the present section 80 of the 1982 Anguilla Constitution. The principal change is to give the grandchildren of Anguillians full rights and to give the great-grandchildren of Anguillians full rights if they satisfy certain residence requirements.

<sup>121</sup> Note that the intention is that the term “Anguillian” replaces the term “Belonger”.

<sup>122</sup> It may be considered prudent to provide for membership and tenure to be protected by the Constitution in a manner similar to section 86(2) rather than relying on section 102(7).

<sup>123</sup> The present law is the Anguilla Belonger Commission Act, RSA c A060, which will need to be replaced and any consequential amendments to existing laws made.

<sup>124</sup> Compare the recommendations at paragraphs 167-178 of the 2006 Report.

- provided that that person has been living (i.e., physically present) in Anguilla for a continuous period of 5 years and his/her absences from Anguilla do not exceed a total of ninety (90) days in each of those years, save for good and sufficient cause. Such a person must apply to the Anguilla Status Commission for a grant of Anguillian status, which grant may be withdrawn at any time on conviction of an indictable offence;
- (c) a person who has been living in Anguilla for a continuous period of 15 years<sup>125</sup> and whose absences from Anguilla for each of those years do not exceed 90 days save for good and sufficient cause and his minor children born in Anguilla. Such a person must apply to the Anguilla Status Commission for a grant of Anguillian status, which grant may be withdrawn at any time on conviction of an indictable offence;
  - (d) a person who is married to an Anguillian for a period of not less than 5 years. Such a person must apply to the Anguilla Status Commission for a grant of Anguillian status, which grant may be withdrawn at any time on conviction of an indictable offence;
  - (e) the minor child of a person who has been granted Anguillian status by the Anguilla Status Commission on the basis of 20 years residence or marriage where the minor child was born overseas, provided that child has been living (i.e., physically present) in Anguilla for a continuous period of 3 years prior to the application and during each of those years his/her absences from Anguilla do not exceed 90 days, save for good and sufficient cause. An application should be made to the Anguilla Status Commission on behalf of the minor child for a grant of Anguillian status, which grant may be withdrawn at any time on conviction of an indictable offence;
  - (f) a person who is born in Anguilla (and who is not regarded as an Anguillian as provided for above) and who has lived in Anguilla for the first 12 years of his/her life and whose absences from Anguilla during each of those years do not exceed 90 days save for good and sufficient cause. Such a person must apply to the Anguilla Status Commission for a grant of Anguillian status, which grant may be withdrawn at any time on conviction of an indictable offence;
  - (g) a person who was previously granted Belonger status under an earlier Constitution.<sup>126</sup>

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<sup>125</sup> A question has arisen whether the process of acquiring “Anguillian status” should be made easier as this will complement economic development. The 1976 Constitution’s Belonger provision spoke to 7 years as the benchmark for the granting of Belonger status.

<sup>126</sup> This paragraph needs to be added to make it clear that persons who were “Belongers” under the 1982 Constitution are now to be referred to as “Anguillians”.

### **Advisory Commission on the Prerogative of Mercy**<sup>127</sup>

**100.** (1) There shall be in and for Anguilla an Advisory Commission on the Prerogative of Mercy (in this section referred to as “the Commission”), which shall consist of the Attorney-General, the Director of Health Services and four members appointed by the Governor acting on the advice of the Cabinet for the purpose of advising the Governor on the exercise of his power of pardon under subsection (3) of this section.

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

(3) Acting on the advice of the Commission,<sup>128</sup> the Governor may, in Her Majesty’s name and on Her behalf,

- (a) grant to any person concerned in the commission of any offence for which he may be tried in Anguilla, or to any person convicted of any offence under any law in force in Anguilla, a pardon, either free or subject to lawful conditions;
- (b) grant to any person so convicted a respite, either indefinite or for a specified period, of the execution of any sentence passed on him in respect of the conviction;
- (c) substitute a less severe form of punishment for that imposed on any such person by any such sentence; or
- (d) remit the whole or any part of any such sentence or of any penalty or forfeiture due to Her Majesty by reason of the conviction.

### **Commissions of Inquiry**<sup>129</sup>

**101.** The Governor acting on the advice of Cabinet may appoint one or more Commissioners selected by him to inquire into the conduct and management of any public body, the conduct of any public official, or into any matter that is, in his opinion, of public importance and as may be prescribed by a law.<sup>130</sup>

### **General provisions regarding Commissions**<sup>131</sup>

**102.** (1) Subject to section 122 and to any contrary specific provisions contained in this Constitution, the following general provisions apply to Commissions.

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

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<sup>127</sup> Adapted from section 44 of the VI Constitution. See the recommendation at paragraph 163 of the 2006 Report.

<sup>128</sup> As recommended by paragraph 163 of the 2006 Report.

<sup>129</sup> It is appropriate to entrench in Chapter 9 the power to appoint commissioners of inquiry.

<sup>130</sup> There is at present an Act, the Commissions of Inquiry Act RSA c C050, but it is not constitutionally protected.

<sup>131</sup> A consolidation of various provisions governing individual Commissions in other BOT Constitutions, made to avoid duplication of the provisions in the case of every Commission.



(3) A Commission may, with the consent of the Governor acting in his discretion, confer powers and impose duties on any public officer or on any authority of the Government for the purpose of the discharge of its functions.

(4) A Commission may act notwithstanding any vacancy in its membership (including any vacancy not filled when appointments of members are first made) and its proceedings shall be valid notwithstanding that some person who was not entitled to do so took part in them; but any decision of a Commission shall require the concurrence of not less than two members of the Commission.

(5) The Governor, acting after consultation with the Premier, shall appoint one of the members of a Commission to be Chairman of the Commission.

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

(7) Save as otherwise provided by this Constitution, the office of a member of a Commission shall become vacant,

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

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

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

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

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

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

(9) No business shall be transacted at any meeting of a Commission if there is not a quorum present.

(10) Any question for decision at any meeting of a Commission shall be determined by a majority of the votes of the members present and voting; and if on any question the votes are equally divided the Chairman shall have and exercise a casting vote.

(11) There shall be charged on the revenues of Anguilla and paid thereout to the members of a Commission such emoluments as may be prescribed by any law for the time being in force in Anguilla:

Provided that the emoluments of a member of a Commission shall not be reduced during his continuance in office.

(12) In the exercise of its functions, a Commission may regulate its own procedure.

(13) Each Commission shall report annually to the Assembly on the performance of his office.

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

### **Legislation regarding Commissions**<sup>132</sup>

**103.** (1) Subject to the provisions of this Constitution, the Assembly may by law make provision for,

- (a) the composition and membership of a Commission;
- (b) the quorum for meetings of a Commission where not otherwise provided for in this Constitution;
- (c) the functions of a Commission;
- (d) the organisation of the work of a Commission and the manner in which it performs its functions;
- (e) consultation by a Commission with persons or authorities other than its members;
- (f) the protection and privileges of members of a Commission in respect of the performance of their functions and the privilege of communications to and from a Commission and its members in the case of legal proceedings;
- (g) the definition and trial of offences in relation to the functions of a Commission and the imposition of penalties for such offences;
- (h) the amalgamation of two or more Commissions with the full powers of each of the constituent Commissions under this Constitution in which case if they are

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<sup>132</sup> Adapted from section 98 of the VI Constitution.

service Commissions which are amalgamated the single Commission shall be known as the Service Commission and if there is any other amalgamated Commission it shall be known as the Administrative Law Commission;

- (i) conferring on a Commission other related functions, without prejudice to the functions conferred on such Commission by this Constitution; and
- (j) the establishment of a secretariat, the members of which shall be public officers, of a Commission.

(2) In this section “Commission” means the Electoral Districts Boundary Commission, the Public Service Commission, the Teaching Service Commission, the Police Service Commission, the National Security Commission, the Financial Service Commission, the Appointments Commission, the Judicial and Legal Service Commission, the Integrity Commission, the Anguillian Status Commission, the Advisory Commission on the Prerogative of Mercy, and a Commission of Inquiry.

### **Human Rights Commissioner**<sup>133</sup>

**104.** (1) There is established a Human Rights Commissioner (in this section referred to as (“the Commissioner”).

(2) The powers and duties of the Commissioner (which shall not derogate from the provisions of this section) shall be such as may be prescribed by law and may include the following,

- (a) the receipt and investigation of complaints of breaches or infringement of any right or freedom referred to in Chapter 1;
- (b) the provision of a forum for dealing with, and participation of the Commissioner in promoting conciliation with respect to complaints and disputes concerning any matter relating to Chapter 1;
- (c) issuing guidance on procedures for dealing with any complaints of breaches or infringements of rights and freedoms referred to in Chapter 1;
- (d) imparting knowledge to the public with respect to the rights and freedoms referred to in Chapter 1 or in relation to any international instrument or activity relating to human rights; and
- (e) preparing and submitting periodically reports concerning its activities to the Assembly.

(3) The power of the Commissioner to deal with any matter under Chapter 1 shall be exercised only with the agreement or concurrence of the persons concerned therewith.

(4) Nothing contained in or done pursuant to any law made under subsection (2) shall,

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<sup>133</sup> Adapted from section 19 of Mrs Richardson’s draft.

- (a) oblige a person to refer any complaint of a breach or infringement of any right or freedom referred to Chapter 1 to the Commissioner; or
- (b) prevent a person from seeking redress directly from the court in relation to any breach or infringement of a right or freedom referred to in Chapter 1, and the fact that such person had previously sought the assistance of the Commissioner with respect to such breach or infringement shall not be a bar.

### **Complaints Commissioner<sup>134</sup>**

**105.** There shall be a Complaints Commissioner for Anguilla who shall investigate, resolve and report on complaints from persons who believe that they have suffered injustice as a result of maladministration by any public authority in Anguilla.<sup>135</sup>

### **Police Complaints Commissioner<sup>136</sup>**

**106.** There shall be a Police Complaints Commissioner for Anguilla who shall oversee the handling of complaints of members of the public against members of the Royal Anguilla Police Service.

### **Public Procurement Commissioner**

**107.** (1) Subject to the rights of innocent third parties no goods, works or services or retention or disposal of public property shall be procured save in accordance with an Act of the Assembly designed to accord with the principles of good governance, accountability, transparency, integrity and value for money.<sup>137</sup>

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

- (a) investigating, on his own initiative or upon complaint from any party involved in public procurement or disposal of public property or any member of the public, any alleged or suspected breach of the Act referred to in subsection (1) of this section; and
- (b) subject to the provisions of this section, any other duty or function that may be conferred on him by the Act referred to in subsection (1) of this section.

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<sup>134</sup> This is the “Ombudsman” provision, as recommended by paragraph 181 of the 2006 Report. The wording is taken from section 110 of the VI Constitution.

<sup>135</sup> “public authority” is a defined term.

<sup>136</sup> By sections 110 and 111 of the VI Constitution, there is a Complaints Commission with such functions and jurisdiction as may be prescribed by law. It is thought preferable to entrench a Police Complaints Commissioner in the Constitution as recommended by paragraph 62 of the 2006 Report.

<sup>137</sup> Wording taken with amendment from the long title and section 6 of the Public Procurement and Disposal of Public Property Act 2015 of Trinidad and Tobago (hereinafter “the Trinidad Act”). This Act has been passed, but as of the date of writing has not been brought into effect by the necessary Proclamation.

### **Freedom of Information Commissioner<sup>138</sup>**

**108.** (1) There shall be an independent Freedom of Information Commissioner for Anguilla who shall receive complaints, investigate, decide and report on the compliance of public authorities with the provisions of the Freedom of Information law enacted by the Assembly.

(2) The law shall provide for a right of access to all information held by public authorities, for the conditions for the exercise of that right, and for restrictions and exceptions to that right in the interests of the security of Anguilla or the United Kingdom, public safety, public order, public morality or the rights and interests of individuals.

(3) In the event that a report prepared by one of the institutions protecting good government is not published contemporaneously with its delivery or within a reasonable time thereafter in a manner designed to give the widest public access to its contents, then the Commissioner shall secure a copy of the report and cause it to be published on an appropriate Anguilla government website.

### **Supervisor of Elections<sup>139</sup>**

**109.** (1) There shall be a Supervisor of Elections for Anguilla appointed by the Governor who shall oversee all matters relating to the holding of elections and referendums.

(2) Subject to section 110, the Supervisor of Elections shall have such other functions and jurisdiction as may be prescribed by law.

### **General provisions relating to Commissioners<sup>140</sup>**

**110.** (1) Subject to any specific provision made above, the following shall apply to any Commissioner appointed under this Constitution.

(2) A Commissioner shall be appointed for a minimum period of five (5) years by the Governor, acting after consultation with the Premier and the Leader of the Opposition, by instrument under the public seal.

(3) No person shall be qualified to be appointed as a Commissioner if he has been within the preceding three years,

- (a) an elected member of the Assembly; or
- (b) the holder of any office in any political party.

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<sup>138</sup> Drafted to ensure that all reports from institutions guaranteeing good governance are published contemporaneously with their delivery, and for the Commissioner to enforce such publication.

<sup>139</sup> It has been recommended that independence of the Supervisor of Elections from political interference be constitutionally protected.

<sup>140</sup> Adapted and consolidated from provisions relating to individual Commissioners in the Constitutions of other BOTs. The question has been raised whether there should not be a minimum qualification (academic, professional, or by experience) for Commissioners.

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

- (a) at the expiration of the period specified in the instrument by which he was appointed;
- (b) if he resigns office by writing under his hand addressed to the Governor;
- (c) if he becomes an elected member of the Assembly or the holder of any office in any political party; or
- (d) if the Governor, acting in his discretion, directs that he shall be removed from office for inability to discharge the functions of the office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour, or for contravention of subsection (5).

(5) Subject to such exceptions as the Governor, acting in his discretion, may authorise by directions in writing, a Commissioner shall not hold any other office of emolument either in the public service or otherwise nor engage in any occupation for reward other than the duties of his office.

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

(7) Subject to section 122 of this Constitution, there shall be charged on the revenues of Anguilla and paid thereout to every Commissioner such emoluments as may be prescribed by any law for the time being in force in Anguilla:

Provided that the emoluments of a Commissioner shall not be reduced during his continuance in office.

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

(9) Subject to the provisions of this Constitution, the Assembly may by law make provision for,

- (a) the functions and jurisdiction of a Commissioner;
- (b) the organisation of the work of a Commissioner and the manner in which he performs his functions;
- (c) consultation by a Commissioner with persons or authorities other than its members;
- (d) the protection and privileges of a Commissioner in respect of the performance of his functions and the privilege of communications to and from a Commissioner in the case of legal proceedings;

- (e) the definition and trial of offences in relation to the functions of a Commissioner and the imposition of penalties for such offences;
- (f) conferring on a Commissioner other related functions, without prejudice to the functions conferred on such Commissioner by this Constitution; and
- (g) the establishment of a secretariat, the members of which shall be public officers, of a Commissioner.

(10) Each Commissioner mentioned in sections 104 to 109 of this Constitution shall report annually to the Assembly on the performance of his office.

(11) The Speaker shall within one month of receipt of any report from a Commissioner publish it in a widely accessible form.

(12) For the purposes of this section “Commissioner” means the Human Rights Commissioner, the Complaints Commissioner, the Police Complaints Commissioner, the Public Procurement Commissioner, the Freedom of Information Commissioner; and the Supervisor of Elections.

### **Public assets**

**111.** (1) Subject to the provisions of any law for the time being in force in Anguilla, the Governor or any person duly authorised by him in writing under his hand may, in Her Majesty’s name and on Her behalf, make and execute under the public seal grants, leases, charges and dispositions of any significant public asset including land in excess of a half-acre, and mineral and fishing rights belonging to Anguilla that may be lawfully dealt with by Her Majesty.

(2) No Crown land in excess of one acre, or lease or charge over any such land in Anguilla may be sold, leased, charged, exchanged, or otherwise disposed of or dealt with without a resolution of the Assembly authorising the transaction.<sup>141</sup>

## **CHAPTER 10**

### **PUBLIC FINANCE<sup>142</sup>**

#### **General principles<sup>143</sup>**

**112.** (1) The macro-economic and fiscal policies of the Government shall be formulated and conducted for the sustained long term prosperity of the people of Anguilla.

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<sup>141</sup> As recommended by paragraph 162 of the 2006 Report.

<sup>142</sup> Taken from the “revised alternate draft of 9 June 2015” of the Anguilla Public Finance Order 2015 without alteration save as may be indicated in these footnotes.

<sup>143</sup> Section 3 of the draft Anguilla Public Finance Order 2015, amended to take account of the Terms of Reference agreed between the Government of Anguilla and the Foreign and Commonwealth Office.

- (2) Public funds shall be managed according to established principles of value for money, affordability and regularity and the interests of long term financial stability.
- (3) The Government shall formulate a framework document (to be called a “Fiscal Framework”) stating its principles of public financial management which sets,
- (a) limits on levels of public debt relative to public revenue;
  - (b) limits on debt service costs as a proportion of recurrent public revenue; and
  - (c) levels of reserves relative to public expenditure.
- (4) Any Fiscal Framework formulated under subsection<sup>144</sup> (3) must be agreed by a Secretary of State in draft before it is adopted by the Government, and the Government shall publish the Fiscal Framework in the Gazette as soon as possible after its adoption.
- (5) On the date of publication of the first Fiscal Framework under subsection (4), the Fiscal Responsibility Act 2013 (RSA c 9 of 2013) shall be repealed.
- (6) The Minister of Finance shall report to the Assembly at least every six months on,
- (a) the performance of the government in implementing the Fiscal Framework; and
  - (b) the state of the public finances and the state of the economy of Anguilla.
- (7) The Government shall aim towards achieving and maintaining a surplus budget, and where an Appropriation Bill would not return a surplus result the Minister of Finance shall, at the same time as the Bill is introduced in the Assembly, lay before the Assembly a statement explaining the reasons for not achieving a surplus.
- (8) Where the Government is in breach, or in the opinion of a Secretary of State is in breach or is likely to be in breach, of the Fiscal Framework,
- (a) all Appropriation Bills or any other bill or significant decision relating to the public finances of Anguilla, including proposals for the Government to borrow, must first be agreed by a Secretary of State; and
  - (b) the Government shall be required to agree with a Secretary of State a Medium Term Fiscal Plan which includes milestones for meeting key debt ratios and clearly articulated policy measures that will lead the Government to come into compliance with the key debt ratios set out in a Fiscal Framework and agreed by a Secretary of State.

## **Taxation**<sup>145</sup>

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<sup>144</sup> The words “paragraph” and “sub-paragraph” in the original draft Order have been replaced by the words “section” and “subsection” to be consistent with Anguillian drafting standards for legislation.

<sup>145</sup> Section 4 of the draft Anguilla Public Finance Order 2015.



**113.** (1) No tax, rate or other levy shall be imposed, and no waiver or variation of any tax, rate or other levy shall be applied, except under the authority of an Act.

(2) Where an Act confers power on any person or authority to waive or vary a tax, rate or other levy imposed by that Act, that person or authority shall report to the House of Assembly on the exercise of those powers as often as shall be determined by law but not less than every six months.<sup>146</sup>

#### **Contingent liabilities**<sup>147</sup>

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

#### **Consolidated Fund**<sup>148</sup>

**115.** (1) There shall continue to be a Consolidated Fund for Anguilla into which shall be paid all revenues or other monies raised or received by and for the purposes of the Government.

(2) The revenues or other monies referred to in subsection (1) shall not include revenues or other monies,

- (a) that are payable by or under an Act into some other fund for a specific purpose; or
- (b) that may, by or under an Act, be retained by the department of government that received them for the purpose of defraying the expenses of that department.

(3) Any sums standing to the credit of the Consolidated Fund may be invested,

- (a) with a bank at call or subject to notice not exceeding twelve months; or
- (b) in an investment authorized by law and approved by the Assembly.

(4) For the avoidance of doubt any investment or deposit made under subsection (3) shall not constitute a withdrawal from the Consolidated Fund.

#### **Withdrawal from Consolidated Fund or other public funds**<sup>149</sup>

**116.** (1) No monies shall be withdrawn from the Consolidated Fund except,<sup>150</sup>

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<sup>146</sup> Power to waive or vary is conferred on the Governor in Council by section 16 of the Financial Administration and Audit Act, RSA c F027 (hereinafter “F027”), and must be done by Regulation, and if more than \$1,000.00 requires the approval of the House of Assembly.

<sup>147</sup> Section 5 of the draft Anguilla Public Finance Order 2015.

<sup>148</sup> Section 6 of the draft Anguilla Public Finance Order 2015.

<sup>149</sup> Section 7 of the draft Anguilla Public Finance Order 2015.

<sup>150</sup> Presently provided for by section 22 of F027.

(a) to meet expenditure charged on the Consolidated Fund by any law in force in Anguilla; or

(b) where the issue of those monies has been authorized by an Appropriation Act, or as provided in subsection (3).

(2) No monies shall be withdrawn from any public fund of Anguilla other than the Consolidated Fund unless the issue of those monies has been authorized by law.<sup>151</sup>

(3) If the Minister of Finance is satisfied that the Appropriation Act in respect of any financial year will not come into force by the beginning of that financial year, the Minister may, if so authorized by the Assembly by resolution and subject to subsection (4), authorize the issue of monies from the Consolidated Fund for the purpose of meeting expenditure necessary to carry on the services of the Government until the expiration of four months from the beginning of that financial year or the coming into force of the Appropriation Act, whichever is the earlier.

(4) Any sum issued in any financial year from the Consolidated Fund under subsection (3) in respect of any ongoing service of the Government,

(a) shall not exceed one third of the amount approved for that service in an Appropriation Act for the previous financial year; and

(b) shall be set off against the amount provided in respect of that service in the Appropriation Act for that financial year when the Act comes into force.

### **Financial year estimates**<sup>152</sup>

**117.** At least six weeks before the beginning of each financial year the Minister shall cause to be prepared and laid before the Assembly,<sup>153</sup>

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

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

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

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<sup>151</sup> The present powers of the Minister under section 28 of F027 to issue “contingency warrants” to spend money not authorised; or under section 29 by a “virement warrant” to vary the amount authorised; or under section 30 by a “reallocation warrant” to switch amounts from head to head, which the Chief Auditor has regularly reported to have been subject to abuse, are not continued.

<sup>152</sup> Section 8 of the draft Anguilla Public Finance Order 2015.

<sup>153</sup> The duty to lay the estimates is presently provided for by section 23 of F027.

## **Appropriation Bill**<sup>154</sup>

**118.** (1) The heads of expenditure contained in the estimates, other than expenditure charged on the Consolidated Fund by any law in force in Anguilla, shall be included in a bill, to be known as an Appropriation Bill, which shall be introduced into the Assembly to provide for the issue from the Consolidated Fund of the sums necessary to meet that expenditure and the appropriation of those sums for the purposes specified in the bill.

(2) If in respect of any financial year it is found that the amount appropriated for any purpose under the Appropriation Act is insufficient or that a need has arisen for expenditure for a purpose for which no amount has been appropriated by that Act, a supplementary estimate showing the sums required shall be laid before the Assembly by the Minister of Finance.<sup>155</sup>

(3) The heads of expenditure contained in a supplementary estimate shall be included in a bill, to be known as a Supplementary Appropriation Bill, which shall be introduced into the Assembly to provide for the issue from the Consolidated Fund of the sums specified in the bill.

(4) The Governor, with the prior approval of a Secretary of State, may refuse to assent to any Appropriation Bill or Supplementary Appropriation Bill if in his judgment the enactment of that bill would be inconsistent with section 107 of this Constitution or the Fiscal Framework.

## **Power of Government to borrow or lend**<sup>156</sup>

**119.** (1) Subject to the provisions of this Constitution, the Government may borrow from any source.<sup>157</sup>

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

(a) as authorized by or under an Act; and

(b) in accordance with the Fiscal Framework and any other borrowing guidelines agreed with Her Majesty's Government in the United Kingdom.

(3) An Act enacted under subsection (2)(a) shall provide,

(a) that the terms and conditions of the loan shall be laid before the Assembly and shall not come into force unless they have been approved by a resolution of the Assembly; and

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<sup>154</sup> Section 9 of the draft Anguilla Public Finance Order 2015, amended to take account of the Terms of Reference agreed between the Government of Anguilla and the Foreign and Commonwealth Office.

<sup>155</sup> The need for supplementary estimates is presently provided for by section 27 of F027.

<sup>156</sup> Section 10 of the draft Anguilla Public Finance Order 2015.

<sup>157</sup> The power to borrow is presently provided for by section 37 of F027.

- (b) that any monies received in respect of that loan shall be paid into and form part of the Consolidated Fund or into some other public fund which exists or is created for the purpose of the loan.
- (4) The Minister shall, at such times as the Assembly may determine and at least every six months, cause to be presented to the Assembly such information concerning any loan as is necessary to show,
- (a) the extent of the total indebtedness by way of principal and accumulated interest;
  - (b) the provision made for servicing or repayment of the loan; and
  - (c) the utilization and performance of the loan.
- (5) Where Her Majesty's Government in the United Kingdom<sup>158</sup> Guarantee is given in connection with any borrowing under this section, the Government shall repay the guaranteed borrowing as quickly as possible.
- (6) The Governor may, on behalf of the Government, enter into counter-indemnity arrangements with Her Majesty's Government in the United Kingdom in relation to any Guarantee in connection with any borrowing under this section, and shall ensure compliance by the Government with its obligations under any such arrangements.
- (7) The Assembly may, by resolution, authorize the Government to enter into an agreement for the giving of a loan or a grant out of any public fund or public account.
- (8) An agreement entered into pursuant to subsection (7)<sup>159</sup> shall be laid before the Assembly and shall not come into force unless it has been approved by the Assembly by resolution.
- (9) Any resolution passed by the Assembly under subsections (7) or (8) must be compatible with section 112 of this Constitution and the Fiscal Framework.<sup>160</sup>
- (10) For the purposes of this section, "loan" includes any money lent or given to or by the Government on condition of return or repayment and any other form of borrowing or lending in respect of which,
- (a) monies from the Consolidated Fund or any other public fund may be used for payment or repayment; or
  - (b) monies from any fund by whatever name called, established for the purpose of payment or repayment whether in whole or in part and whether directly or indirectly, may be used for payment or repayment.<sup>161</sup>

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<sup>158</sup> The wording in the original is amended to refer to the UK Government, as Departments may be renamed.

<sup>159</sup> The original has "(5)," but from the context it is apparent that "(7)" was intended.

<sup>160</sup> The original has "(5) or (6)," but from the context it is apparent that "(7) and (8)" were intended.

## **Exercise of functions by Governor<sup>162</sup>**

**120.** In the exercise of any function conferred on the Governor by sections 112 to 119,<sup>163</sup> of this Constitution the Governor shall comply with any instructions that may be given to him by a Secretary of State.<sup>164</sup>

## **Appropriations Committee<sup>165</sup>**

**121.** (1) There shall be an Appropriations Committee of the Assembly, which shall consist of at least three members of the Assembly appointed by the Speaker from among members who are not Ministers, at least one of whom shall be a member of the house in opposition to the Government.

(2) The Appropriations Committee may co-opt to its membership up to two persons who are not members of the Assembly, either on a continuing basis or for the purpose of a specific enquiry conducted by the Committee, and shall be assisted in its work by the Permanent Secretary, Finance, or his nominee and permanent Committee staff.

(3) The Appropriations Committee shall have power to compel the production of documents and evidence from Ministers, departments of government and public officers, and shall meet in public.

(4) The Appropriations Committee shall have and exercise the functions conferred on it by this Constitution and such other functions as may be conferred on it by any other law or by Standing Orders.

(5) The House of Assembly shall publish all reports of the Appropriations Committee without delay.

## **Funding of institutions protecting good governance<sup>166</sup>**

**122.** (1) An institution protecting good governance shall be provided with an office, and with staff and administrative facilities, appropriate to the institution's responsibilities.

(2) The salaries and allowances of the staff of the institution are charged on and shall be paid out of the Consolidated Fund.

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<sup>161</sup> Note that the next following which adopted section 11 of the draft 2015 Order has been deleted to take account of the Terms of Reference agreed between the Government of Anguilla and the FCO.

<sup>162</sup> Section 12 of the draft Anguilla Public Finance Order 2015.

<sup>163</sup> The words "this Order" replaced by "sections 104 to 112."

<sup>164</sup> Subsections (1) and (2) are deleted to take account of the Terms of Reference agreed between the Government of Anguilla and the Foreign and Commonwealth Office.

<sup>165</sup> Taken from section 114 of the TCI Constitution.

<sup>166</sup> Adapted from section 105 of the TCI Constitution . (Unless the provision of resources for these institutions is removed from the control of the Minister of Finance and placed in the hands of the Assembly, experience elsewhere in the West Indies has shown that a Commission that has fallen out of favour with a Government can be neutralised by starving it of funds). Subsection (1) provides additional support, as approved by the Appropriations Committee and the Assembly, for these institutions.

(3) Notwithstanding subsections (1) and (2), the Governor after consultation with the Chief Minister and the Leader of the Opposition may confer powers and impose duties on any public officer or any authority of the Government for the purpose of the discharge of any of the institution's functions.

(2) Before the 31<sup>st</sup> of August of the preceding year,<sup>167</sup>

(a) each institution protecting good governance shall submit to the Appropriations Committee of the Assembly a bid for its budget for the following financial year;

(b) the Appropriations Committee shall scrutinise each bid in public hearings and, having satisfied itself that the bid conforms to the Government's current budget policies and made any amendments it considers necessary for that purpose, recommend to the Assembly a budget for each institution for that financial year.

(3) The Assembly may pass or reject a budget recommended to it under subsection (1)(b) but may not amend it.

(4) If the Assembly passes a budget recommended to it under this section, that budget shall form part of the Appropriation Act for that financial year.

(5) If the Assembly rejects a budget recommended to it under subsection (1)(b), the Appropriations Committee shall reconsider the budget in question and, after consulting the institution concerned, recommend a revised budget to the Assembly; and the same procedure shall be followed if the Assembly rejects a revised budget recommended to it.<sup>168</sup>

### **Public Accounts Committee**<sup>169</sup>

**123.** (1) There shall be a Public Accounts Committee of the Assembly which shall consist of,

(a) at least three members of the Assembly appointed by the Speaker from among members who are not Ministers; and

(b) two persons expert in public finance who are not members of the Assembly, one of whom shall be appointed by the Speaker and one of whom shall be appointed by the Governor acting in his discretion.

(2) the Chairman of the Public Accounts Committee shall be the Leader of the Opposition.

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<sup>167</sup> Amended to ensure the preparation of each institution's budget is timed so as to fit into the overall budgetary process.

<sup>168</sup> Subsection (5) of the TCI provision is deleted to take account of the Terms of Reference agreed between the Government of Anguilla and the Foreign and Commonwealth Office

<sup>169</sup> As recommended by paragraph 126 of the 2006 Report. Taken from section 122 of the TCI Constitution.

(3) A person appointed under subsection (1)(b) shall cease to be a member of the Public Accounts Committee,

(a) at the expiration of the period for which he was appointed;

(b) if he becomes a member of the Assembly; or

(c) if the person who made the appointment revokes it, acting in his discretion.

(4) If in respect of any item of business before the Public Accounts Committee the Governor, acting after consultation with the Speaker and the Chairman of the Committee, considers that a member of the Committee has a conflict of interest, the Governor, acting in his discretion, may appoint another person (whether or not a member of the Assembly) temporarily to replace that member of the Committee for the purpose of dealing with the business in question, and a member so replaced shall not sit on the Committee when the Committee is dealing with that business.

(5) The Public Accounts Committee shall examine and report to the Assembly on,

(a) the reports submitted to the Committee by the Chief Auditor under section 126 of this Constitution; and

(b) such management letters and reports of the Chief Auditor as have been submitted to the Committee or as have been laid before the House or as the Chief Auditor has brought to the attention of the House;

and shall have and exercise such other functions, and shall operate under such procedures, as may be prescribed by this Constitution or as may be prescribed by Act or by Standing Orders.

(6) The Public Accounts Committee shall report to the Assembly by the date set by the Assembly or by its terms of reference, whichever is the earlier; and except as otherwise provided in the Committee's terms of reference, such a report may be with or without recommendations.

(7) If the Assembly adopts a report of the Public Accounts Committee, and requests the responsible member of the Cabinet to advise the Assembly of the action proposed to be taken by the Government in respect of the report, the member concerned shall convey the Government's response to the House not later than the first sitting day following the expiration of six weeks after the date of the House's request, unless the Assembly extends the time for the response.

(8) The Chief Auditor shall be adviser to the Public Accounts Committee, and the Committee shall not meet without the presence of the Chief Auditor or his nominee.

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

### **Accounting officers**<sup>170</sup>

**124.** (1) There shall be an Accountant General of the Government, whose office shall be a public office.

(2) The Accountant General shall be responsible for the compilation and management of the accounts of the Government, and for the custody and safety of public money and other resources of the Government.

(3) The most senior officer in each ministry or department of government and each institution protecting good governance<sup>171</sup> shall be designated an accounting officer who shall be responsible for the regularity and propriety of the expenditure, receipts and resources of that ministry, department or institution, and shall be accountable to the Assembly.<sup>172</sup>

### **Remuneration of Speaker and other members of Assembly**<sup>173</sup>

**125.** (1) There shall be paid to the Speaker and other members of the Assembly such remuneration and allowances as may be prescribed by an Act.

(2) The Assembly shall not proceed on any bill for an Act referred to in subsection (1) unless a report by the Integrity Commission recommending the appropriate levels of such remuneration and allowances has been laid before the Assembly and has been published; and no Act shall provide for levels of remuneration or allowances that exceed the levels recommended in such report.

(3) The remuneration and allowances payable to the Speaker and other members of the Assembly are hereby charged on and shall be paid out of the Consolidated Fund.

### **Audit**<sup>174</sup>

**126.** (1) There shall be a Chief Auditor whose office shall be a public office.

(2) The accounts of the Assembly and all government departments and offices (including all Commissions and individual Commissioners) shall be audited and reported on annually by the Chief Auditor, and for that purpose the Chief Auditor or any person authorised by him in that behalf shall have access to all books, records, returns and other documents relating to such accounts.

(3) In the exercise of his functions under this section, the Chief Auditor shall not be subject to the direction or control of any other person or authority.

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<sup>170</sup> Taken from the TCI Constitution, section 123.

<sup>171</sup> Subsection (4) is deleted as it appears redundant, “each department of government and each institution protecting good governance” in subsection (3) needing no further clarification.

<sup>172</sup> Amended to take account of the Terms of Reference agreed between the Government of Anguilla and the Foreign and Commonwealth Office.

<sup>173</sup> Taken from the TCI Constitution, section 124.

<sup>174</sup> Based on section 109 of the VI Constitution.



(4) The Chief Auditor shall submit his reports made under subsection (2) of this section to the Speaker of the Assembly who shall lay them before the Assembly; and the Chief Auditor shall also send a copy of each report to the Governor.<sup>175</sup>

(5) Within one month of the laying of a report before the Assembly, the Speaker shall cause such report to be published in a widely accessible form.

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**THE SCHEDULE TO THE CONSTITUTION  
FORMS OF OATHS AND AFFIRMATIONS**

**Sections 27(4), 29(2), 41 and 71**

*1. Oath of Allegiance*

I ..... do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, according to law. So help me God.

*2. Oath for due execution of office*

I ..... do swear that I will well and truly serve Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, in the office of .....  
*(here insert the description of the office)*. So help me God.

*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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<sup>175</sup> Amendment made to the original drafting to improve clarity of wording.

## **APPENDIX B**

### **Thomas WR Astaphan QC's proposals for constitutional and electoral reform for Anguilla**

Mr Astaphan QC is a member of the Committee. He disagrees with the Committee's proposals at **Appendix A**, and makes the following suggestions as some initial provisions for an alternative Constitution.

In his view, any new Constitution should at the very least have contained in it the mechanism for steps to Independence.

He suggests that election should be to a specific Ministerial Office, rather to the Assembly with the Majority forming the Executive. For example, a person would run for election to the Ministry of Economic and Financial Affairs which would encompass Finance, Economics, Commerce etc., and same with the other Ministerial Portfolios.

The "Premier" should be elected directly to that Office and, in addition to Home Affairs, Immigration and Labour, just be Chairman of the Cabinet Meetings. He/She would sit in the Assembly as a Non-voting Liaison between the Cabinet and the Legislature so that he would convey to the Legislature the Cabinet's Policies etc. He should enjoy nothing else; no other powers over any Minister or otherwise. He would be equal in authority and power to every other directly elected Minister. Patronage and the like must go out the window.

There should be recall powers to the People who, at any time after 6 months of an election can recall any elected person.

Membership of Public and Statutory Bodies should also be elected by the People. No appointments to be made by anybody.

All Meetings MUST be held in Public, including Cabinet Meetings. If there is a suggestion of a National Security matter to be discussed, the sound can be turned off, but BEFORE any such occurs, the Ombudsman must first review a request from Cabinet for that matter to be discussed in Camera, and he/she must (a) provide a summary for publication to the People of the facts and his reason for approving, and (b) he must approve the matter being in camera. Since they represent the People, there can be no secrets from the People.

There should be a separate Legislature in which Executive Members - separately elected - CANNOT sit. True Separation of the Executive from the Legislature.

There should be maximum Term limits - two terms, consecutive or otherwise - and persons who have already served prior to the new Constitution shall only be eligible to serve one Term.

Salaries for Ministers and Members of the Legislature must be approved by the People at the Elections; Legislative Members would NOT get any monthly pay or allowances, but would be paid a per diem for each day of the House Sitting they attend for at least 75% of the day's sitting.

The People will have the power to recall Legislation, so that if they do not approve of any Legislation passed by the House, they can nullify it. In this age of technology all this can be done simply.

Voters should only be registered to vote if they live and reside in Anguilla FULL TIME. No more Tourist voters who, in the current Constitution, do NOT qualify to be registered anyway.

[More to follow.]

