



ANGUILLA

**APPENDIX**

**ANGUILLA CONSTITUTION ORDER 1982**

Showing the Law as at 15 December 2000

This edition consolidates the following —

**Anguilla Constitution Order 1982**

Statutory Instrument 1982 No. 334

**Anguilla, Montserrat and Virgin Islands (Supreme Court) Order 1983**

Statutory Instrument 1983 No. 1108 – Section 4

**Anguilla Constitution (Amendment) Order 1990**

Statutory Instrument 1990 No. 587

This edition also contains the following unconsolidated provision—

Statutory Instrument 1990 No. 587 – Section 26

*Note: Readers are advised that this consolidation is prepared for the convenience of users only and has no official sanction.*

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ANGUILLA



**S.I. 1982 NO. 334****ANGUILLA****THE ANGUILLA CONSTITUTION ORDER 1982**

*Made*..... 10th March 1982  
*Coming into Operation* ..... 1st April 1982

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

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, by virtue of the powers conferred upon Her by section 1(2) of the Anguilla Act 1980<sup>1</sup> and sections 6(1) and 17(4) of the West Indies Act 1967<sup>2</sup>, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

**Citation and commencement**

1. (1) This Order may be cited as the Anguilla Constitution Order 1982.
- (2) This Order shall come into operation on 1st April 1982.

**Constitution of Anguilla and revocation**

2. (1) The Schedule to this Order shall have effect as the Constitution of Anguilla as from the commencement of this Order; and the Anguilla (Constitution) Order 1976<sup>3</sup> is revoked with effect from such commencement.

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

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

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<sup>1</sup> 1980 c. 67

<sup>2</sup> 1967 c. 4

<sup>3</sup> S.I. 1976/50

**Administration of justice****3.** (1) and (2)<sup>4</sup>

(3) The reference in section 15(1)(c) of the Constitution to the High Court and Court of Appeal shall be construed as including a reference to the Supreme Court established by the Windward Islands and Leeward Islands (Courts) Order in Council 1959<sup>5</sup> and the British Caribbean Court of Appeal established by the British Caribbean Court of Appeal Order in Council 1962<sup>6</sup>.

**Citizenship****4.** (1) and (2)<sup>7</sup>

(3) If a person who was born in St. Christopher or in Nevis before 19th December 1980 is ordinarily resident in Anguilla, having been so resident since that date, he shall be treated for the purposes of section 80(2) of the Constitution as if he had been born in Anguilla.<sup>8</sup>

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

(a) any such person shall be regarded as having been so registered or naturalised while resident in Anguilla for the purposes of subsection 2(a)(v) of section 80 of the Constitution<sup>9</sup>; and

(b) any such person who is ordinarily resident in Anguilla, having been so resident since 19th December 1980, shall be regarded likewise for the purposes of subsection 2(a)(vi) of that section.<sup>10</sup>

**Existing offices and authorities**

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

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

<sup>4</sup> S.I. 4 of S.I. 1983/1108, which replaces these provisions.

<sup>5</sup> S.I. 1959/2197

<sup>6</sup> S.I. 1962/1086, 1962/1245

<sup>7</sup> S. 25(3)(a) of S.I. 1990/587

<sup>8</sup> S. 25(3)(b) of S.I. 1990/587

<sup>9</sup> S. 25(3)(c) of S.I. 1990/587

<sup>10</sup> S. 25(3)(d) of S.I. 1990/587

**Existing laws**

6. (1) All Acts, Ordinances, rules, regulations, orders and other instruments made under or having effect by virtue of the former Constitution and having effect as part of the law of Anguilla immediately before the commencement of this Order shall after such commencement have effect as if they had been made under or by virtue of this Constitution.

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

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

**Inhuman treatment**

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

**Dissolution of Assembly**

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

**Power reserved to Her Majesty**

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

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

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## CHAPTER I

## PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS

**Fundamental rights and freedoms of the individual**

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

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

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

**Protection of right to life**

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

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

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

or if he dies as the result of a lawful act of war.

**Protection of right to personal liberty**

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

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

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

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

(3) Any person who is arrested or detained—

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

and who is not released, shall be brought without delay before a court; and if any person arrested or detained upon reasonable suspicion of his having committed or being about to commit a criminal offence under the law of Anguilla is not tried within a reasonable time, then, without prejudice to any further proceedings which may be brought against him, he shall be released either unconditionally or

upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.

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

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

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

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

- 4.** (1) No person shall be held in slavery or servitude.
- (2) No person shall be required to perform forced labour.
- (3) For the purposes of this section, the expression “forced labour” does not include—
- (a) any labour required in consequence of the sentence or order of a court;
  - (b) labour required of any person while he is lawfully detained that, though not required in consequence of the sentence or order of a court, is reasonably necessary in the interests of hygiene or for the maintenance of the place at which he is detained;
  - (c) any labour required of a member of a disciplined force in pursuance of his duties as such or, in the case of a person who has conscientious objections to service as a member of a naval, military or air force, any labour that that person is required by law to perform in place of such service;
  - (d) any labour required during any period of public emergency or in the event of any other emergency or calamity that threatens the life and well-being of the community, to the extent that the requiring of such labour is reasonably justifiable in the circumstances of any situation arising or existing during that period or as a result of that other emergency or calamity, for the purpose of dealing with that situation.

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

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

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

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

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

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

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

**Protection from inhuman treatment**

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

**Protection from deprivation of property**

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

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

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

- (a) in satisfaction of any tax, rate or due; or
- (b) by way of penalty for breach of the law, whether under civil process or after conviction of a criminal offence under the law of Anguilla; or
- (c) upon the attempted removal of the property in question out of or into Anguilla in contravention of any law; or
- (d) by way of the taking of a sample for the purpose of any law; or
- (e) where the property consists of an animal upon its being found trespassing or straying; or
- (f) as an incident of a lease, tenancy, licence, mortgage, charge, bill of sale, pledge or contract; or
- (g) by way of the vesting or administration of trust property, enemy property, or the property of persons adjudged or otherwise declared bankrupt or insolvent, persons of unsound mind, deceased persons, or bodies corporate or unincorporate in the course of being wound up; or
- (h) in the execution of judgments or orders of courts; or
- (i) by reason of its being in a dangerous state or injurious to the health of human beings, animals or plants; or
- (j) in consequence of any law with respect to the limitation of actions; or

- (k) for so long only as may be necessary for the purposes of any examination, investigation, trial or inquiry or, in the case of land, the carrying out thereon—
- (i) of work of soil conservation or of conservation of other natural resources; or
  - (ii) of work relating to agricultural development or improvement which the owner or occupier of the land has been required, and has without reasonable excuse refused or failed, to carry out.

(3) Nothing in this section shall be construed as affecting the making or operation of any law so far as it provides for the orderly marketing or production or growth or extraction of any agricultural product or mineral or any article or thing prepared for market or manufactured therefor<sup>11</sup> or for the reasonable restriction of the use of any property for the purpose of safeguarding the interests of others or the protection of tenants, licensees or others having rights in or over such property.

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

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

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

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

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

- (a) that is reasonably required in the interests of defence, public safety, public order, public morality, public health, public revenue, town and country planning or the development and utilisation of any property in such a manner as to promote the public benefit;
- (b) that authorises an officer or agent of the Government of Anguilla, a local government authority or a body corporate established by law for public purposes to enter on the premises of any person in order to inspect those premises or anything thereon for the purpose of any tax, rate or due or in order to carry out work connected with any property that is lawfully on those premises and that belongs to that Government, authority or body corporate, as the case may be;
- (c) that is reasonably required for the purpose of preventing or detecting crime;

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<sup>11</sup> The word “therefor” is indicated as “therefore” in the original.

- (d) that is reasonably required for the purpose of protecting the rights or freedoms of other persons; or
- (e) that authorises, for the purpose of enforcing the judgment or order of a court in any civil proceedings, the search of any person or property by order of a court or entry upon any premises by such order,

and except so far as that provision or, as the case may be, anything done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(11) In the case of any person who is held in lawful detention the provisions of subsection (1), subsection (3) and paragraphs (c) and (d) of subsection (5) of this section shall not apply in relation to his trial for a criminal offence under the law regulating the discipline of persons held in such detention.

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

**Protection of freedom of conscience**

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

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

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

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

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

- (a) in the interests of defence, public safety, public order, public morality or public health;
- (b) for the purpose of protecting the rights and freedoms of other persons, including the right to observe and practise any religion without the unsolicited intervention of members of any other religion; or
- (c) for the purpose of regulating educational institutions in the interests of persons who receive or may receive instruction in them,

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

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

**Protection of freedom of expression**

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

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

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

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

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

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

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

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

- (a) that is reasonably required—
  - (i) in the interests of defence, public safety, public order, public morality or public health; or
  - (ii) for the purpose of protecting the rights or freedoms of other persons; or
- (b) that imposes restrictions upon public officers:

Provided that:—

- (i) paragraph (a)(ii) of this subsection shall not apply in relation to a provision that operates so as to prohibit a trade union or other association from carrying out activities preventing or restricting persons who are not members of that trade union or other association from pursuing a particular trade, profession or employment unless that provision is contained in a written law;
- (ii) the provision or, as the case may be, the thing done under the authority of any such law is shown to be reasonably justifiable in a democratic society.

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

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

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

(3) In this section, the expression “discriminatory” means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, place of origin, political opinions, colour, creed or sex whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description<sup>12</sup>.

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

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

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

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

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

- (a) whereby persons of any such description as is mentioned in subsection (3) of this section may be subjected to any restriction on the rights and freedoms guaranteed by sections 5, 8, 10, 11 and 12 of this Constitution, being such a restriction as is authorised by paragraph (a), (b) or (g) of subsection (3) of section 5, subsection (2) of section 8, subsection (5) of section 10, subsection (2) of section 11, or subsection (3) of section 12, as the case may be; or
- (b) which is reasonably justifiable in a democratic society for the protection or well-being of women.<sup>13</sup>

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<sup>12</sup> S. 3(a) of S.I. 1990/587

<sup>13</sup> S. 3(b) of S.I. 1990/587

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

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

**14.** Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of section 3 or section 13 of this Constitution to the extent that the law authorises the taking during any period of public emergency of measures that are reasonably justifiable for dealing with the situation that exists in Anguilla during that period.

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

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

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

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

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

### **Enforcement of protective provisions**

**16.** (1) If any person alleges that any of the provisions of sections 2 to 15 (inclusive) of this Constitution has been, or is being, contravened in relation to him (or, in the case of a person who is detained, if any other person alleges such a contravention in relation to the detained person), then,

without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the High Court for redress.

(2) The High Court shall have original jurisdiction to hear and determine any application made by any person in pursuance of subsection (1) of this section and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of, any of the provisions of the said sections 2 to 15 (inclusive) to the protection of which the person concerned is entitled:

Provided that the High Court may decline to exercise its powers under this subsection if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law.

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

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

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

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

### **Declaration of emergency**

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

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

### **Interpretation and savings**

**18.** (1) In this Chapter, unless the context otherwise requires—

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

“court” means any court of law having jurisdiction in Anguilla other than a court established by a disciplinary law, and includes Her Majesty in Council and in section 2 of this Constitution a court established by a disciplinary law;

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

“disciplined force” means—

- (a) a naval, military or air force;
- (b) the Police Force; or
- (c) a prison service;

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

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

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

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

(3) In relation to any person who is a member of a disciplined force raised under the law of Anguilla, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter other than sections 2, 4 and 5 of this Constitution.

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

(5)<sup>14</sup>

## CHAPTER II

### THE GOVERNOR

#### **The Governor**

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

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<sup>14</sup> S. 25(1) of S.I. 1990/587

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

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

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

### **Office of Deputy Governor**

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

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

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

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

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

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

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

- (a) the functions conferred upon the Governor by this section; or
- (b) any functions conferred upon the Governor by any Act of the Parliament of the United Kingdom or by any Order of Her Majesty in Council or other instrument made under any such Act other than the Anguilla Act 1980<sup>15</sup>.

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<sup>15</sup> 1980 c. 76

(7) If the office of Deputy Governor is vacant or the person holding that office is acting in the office of Governor under section 20 of this Constitution or is for any other reason unable to perform the functions of the office of Deputy Governor, then the Governor, acting in his discretion, may appoint a person to act as Deputy Governor and any such person shall continue to act until his appointment is revoked by the Governor, acting in his discretion.<sup>16</sup>

### Acting Governor

**20.** (1) During any period when the office of Governor is vacant or the Governor is absent from Anguilla, or is for any other reason unable to perform the functions of the office of Governor, such person as may be designated by Her Majesty by instructions to the Governor through a Secretary of State or if no person is so designated and able to perform those functions, the Deputy Governor shall, during Her Majesty's pleasure, act in the office of Governor and shall perform the functions of that office accordingly.<sup>17</sup>

(2) Before assuming the functions of the office of Governor, the person designated or, as the case may be, the Deputy Governor shall make the oaths directed by section 19(4) of this Constitution to be made by the Governor.<sup>18</sup>

(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.<sup>19</sup>

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

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

### Governor's deputy

**21.** (1) Whenever the Governor—

- (a) has occasion to be absent from Anguilla for a period which he has reason to believe will be of short duration; or
- (b) is suffering from illness which he has reason to believe will be of short duration,

he may in his discretion, by writing under his hand, appoint the Deputy Governor or, in the absence of the Deputy Governor, some other suitable person in Anguilla to be his deputy during such absence or illness and in that capacity to perform on his behalf such of the functions of the office of Governor as may be specified in the instrument by which he is appointed.<sup>20</sup>

(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

<sup>16</sup> S. 4 of S.I. 1990/587

<sup>17</sup> S. 5 of S.I. 1990/587

<sup>18</sup> S. 5 of S.I. 1990/587

<sup>19</sup> S. 5 of S.I. 1990/587

<sup>20</sup> S. 6 of S.I. 1990/587

all instructions that the Governor, acting in his discretion, may from time to time address to him; but no court shall enquire whether or not he has complied with any such instructions.

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

### CHAPTER III THE EXECUTIVE

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

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

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

#### **Executive Council**

**23.** There shall be an Executive Council in and for Anguilla which shall consist of the Chief Minister, not more than three other Ministers and two ex-officio members, namely, the Deputy Governor and Attorney-General.<sup>21</sup>

#### **Appointment of Ministers**

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

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

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

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

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

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

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<sup>21</sup> S. 7 of S.I. 1990/587

(2) The provisions of sections 24(3) and (4), 25(3) and (4) and 30 of this Constitution shall apply in relation to the Parliamentary Secretary as they apply in relation to a Minister other than the Chief Minister.<sup>22</sup>

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

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

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

(3) Any Minister shall vacate his office if—

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

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

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

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

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

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

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

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<sup>22</sup> S. 8 of S.I. 1990/587

**Assignment of responsibilities to Ministers**

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

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

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

**Governor to consult Council**

**28.** (1) Subject to the provisions of this section and the next following section, the Governor shall consult with the Executive Council in the formulation of policy and in the exercise of all powers conferred upon him by this Constitution or by any other law for the time being in force in Anguilla and act in accordance with the advice of the Council.

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

- (a) any matter that in his opinion relates to defence, external affairs, international financial services or any directly related aspect of finance, or internal security, including the police;<sup>23</sup>
- (b) the appointment (including the appointment on promotion or transfer, appointment on contract and appointment to act in an office) of any person to any public office, the suspension, termination of employment, dismissal, or retirement of any public officer or taking of disciplinary action in respect of such an officer, the application to any public officer of the terms or conditions of employment of the public service (including salary scales, allowances, leave, passages or pensions) for which financial provision has been made;
- (c) any power conferred upon him by this Constitution that he is empowered to exercise in his discretion or in pursuance of instructions given to him by Her Majesty;
- (d) any power conferred by any law other than this Constitution that he is empowered or directed, either expressly or by necessary implication, by that or any other law to exercise without consulting the Council;
- (e) any matter in which, in his judgment, the service of Her Majesty would sustain material prejudice thereby;
- (f) where the matter to be decided is in his judgment too unimportant to require the advice of the Council; or

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<sup>23</sup> S. 9(a) of S.I. 1990/587

- (g) where the urgency of the matter requires him to act before the Council can be consulted:

Provided that in exercising his powers in relation to—

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

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

### **Governor's responsibilities**

(4) The Governor shall be responsible for the conduct (subject to the provisions of this Constitution and any other law) of any business of the Government of Anguilla, including the administration of any department of Government, with respect to the matters referred to in paragraphs (a) and (b) of subsection (2) of this section:

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

(5) The Governor, acting in his discretion, may by directions in writing delegate, with the prior approval of a Secretary of State, to the Chief Minister or any other Minister designated by him after consultation with the Chief Minister such responsibility for matters relating to external affairs, international financial services or internal security as the Governor may think fit upon such conditions as he may impose.<sup>24</sup>

(6) Where the Governor, acting in his discretion, determines that the exercise of any function conferred upon any other person or authority (other than the Assembly) would involve or affect any matter referred to in paragraphs (a) and (b) of subsection (2) of this section, he may, acting in his discretion, give directions as to the exercise of that function, and the person or authority concerned shall exercise the function in accordance with those directions.<sup>25</sup>

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

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

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<sup>24</sup> S. 9(b) of S.I. 1990/587

<sup>25</sup> S. 9(b) of S.I. 1990/587

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

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

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

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

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

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

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

**32.** (1) The Executive Council shall not be summoned except by the authority of the Governor, acting in his discretion:

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

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

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

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

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

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

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

**Attorney-General**

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

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

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

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

Provided that where any other person or authority has instituted criminal proceedings, nothing in this subsection shall prevent the withdrawal of those proceedings by or at the instance of that person or authority at any stage before the person against whom the proceedings have been instituted has been charged before the court.

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

**CHAPTER IV****THE HOUSE OF ASSEMBLY****House of Assembly**

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

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

- (a) the Speaker;
- (b) two ex-officio members, namely the Attorney-General and the Deputy Governor;<sup>26</sup>
- (c) not less than seven members elected in the manner provided by law; and
- (d) two nominated members, being persons who belong to Anguilla of the age of twenty-one years or upwards, appointed by the Governor by instrument under the public seal in accordance with subsection (3) of this section.<sup>27</sup>

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<sup>26</sup> S. 10(a) of S.I. 1990/587

- (3) Of the two nominated members, one shall be appointed by the Governor acting in accordance with the advice of the Chief Minister, and the other shall be appointed by the Governor acting after consultation with the Chief Minister and the Leader of the Opposition, if any.<sup>28</sup>

### **Qualifications for elected membership**

**36.** Subject to the provisions of the next following section, a person shall be qualified to be elected as a member of the Assembly if, and shall not be qualified to be so elected unless, he is a person who belongs to Anguilla of twenty-one years or upwards who is registered as a voter in an electoral district in Anguilla and either—<sup>29</sup>

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

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

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

- (a) is, by virtue of his own act, under any acknowledgement of allegiance, obedience or adherence to a foreign power or state;
- (b) is a minister of religion;
- (c) holds or is acting in any office of emolument in the service of the Crown;
- (d) is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law in force in any country;<sup>30</sup>
- (e) is a person certified to be insane or otherwise adjudged to be of unsound mind under any law in force in Anguilla;
- (f) is under sentence of death imposed on him by a court of law in any country or is under a sentence of imprisonment (by whatever name called) exceeding twelve months imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court, provided that the acts constituting the offence for which such sentence was imposed would, if committed in Anguilla, have constituted an offence under the law of Anguilla;<sup>31</sup> or <sup>32</sup>

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<sup>27</sup> S. 10(b) of S.I. 1990/587

<sup>28</sup> S. 10(c) of S.I. 1990/587

<sup>29</sup> S. 11 of S.I. 1990/587

<sup>30</sup> S. 12(a) of S.I. 1990/587

<sup>31</sup> S. 12(b) of S.I. 1990/587

<sup>32</sup> The word “or” is omitted in the original.

(g) is disqualified for membership of the Assembly by any law in force in Anguilla relating to offences connected with elections.

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

(3) For the purposes of paragraph (f) of subsection (1) of this section—

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

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

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

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

- (a) upon a dissolution of the Assembly;
- (b) if, without prior notice to the Governor, he is absent from three consecutive meetings of the Assembly;
- (c) if he ceases to be a person who belongs to Anguilla;<sup>33</sup>
- (d) if he ceases to be resident in Anguilla;
- (e) if he resigns his seat by writing under his hand addressed to the Governor;
- (f) if any of the circumstances arise that, if he were not a member of the Assembly, would cause him to be disqualified for election thereto by virtue of paragraph (a), (b), (c), (d), (e), or (g) of subsection (1) of the last foregoing section; or
- (g) in the circumstances specified in the next following section.

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

**39.** (1) Subject to the provisions of this section, if a nominated or elected member of the Assembly is sentenced by a court of law in any country to death or to imprisonment (by whatever name called) for a term exceeding twelve months, and the acts constituting the offence for which such sentence was imposed would, if committed in Anguilla, have constituted an offence under the law of Anguilla, he shall forthwith cease to perform his functions as a member of the Assembly, and his seat in the Assembly shall become vacant at the expiration of a period of thirty days thereafter;<sup>34</sup>

<sup>33</sup> S. 13 of S.I. 1990/587

<sup>34</sup> S. 14 of S.I. 1990/587

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

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

(3) For the purposes of this section—

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

(b) no account shall be taken of a sentence of imprisonment imposed as an alternative to or in default of the payment of a fine.

#### **Temporary members of Assembly**

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

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

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

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

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

#### **Leader of the Opposition**

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

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

(a) the member of the Assembly who in the judgement of the Governor, is the leader of any opposition party whose numerical strength in the Assembly is greater than that of any other opposition party; or

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

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

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

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

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

(6) In the exercise of his functions under this section the Governor shall act in his discretion.<sup>35</sup>

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

**41.** (1) Any question whether a person has been validly appointed as a nominated or a temporary member of the Assembly, or whether a nominated or a temporary member of the Assembly has vacated his seat therein or is required by virtue of section 39 of this Constitution to cease to perform his functions as a member, shall be determined by the Governor acting in his discretion.<sup>36</sup>

(2) Any question whether a person has been validly elected as a member of the Assembly, or whether an elected member of the Assembly has vacated his seat therein or is required by virtue of section 39 of this Constitution to cease to perform his functions as a member, shall be determined by the High Court, whose decision shall be final and not subject to any appeal.<sup>37</sup>

- (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

<sup>35</sup> S. 15 of S.I. 1990/587

<sup>36</sup> S. 16 of S.I. 1990/587

<sup>37</sup> S. 16 of S.I. 1990/587

of section 39 of this Constitution to cease to perform his functions as a member may be made by—<sup>38</sup>

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

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

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

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

#### **Qualification of voters**

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

- (a) is a British Dependent Territories citizen born in Anguilla, and is domiciled there at the qualifying date; or
- (b) (i) is a person who belongs to Anguilla who has resided in Anguilla for a period of not less than twelve months immediately before the qualifying date, and is domiciled there at that date, and is the lawful spouse, widow or widower, or the son or daughter or the spouse of such son or daughter of a person who was born in Anguilla; or<sup>39</sup>
  - (ii) is a person who belongs to Anguilla who is domiciled in Anguilla and has resided there for a period of at least five years immediately before the qualifying date; and<sup>40</sup>
- (c) is at the qualifying date resident in the electoral district in which he claims to be registered.

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

#### **Disqualification of voters**

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

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<sup>38</sup> S. 16 of S.I. 1990/587

<sup>39</sup> S. 17(a) of S.I. 1990/587

<sup>40</sup> S. 17(b) of S.I. 1990/587

- (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;<sup>41</sup>
  - (b) is a person certified to be insane or otherwise adjudged to be of unsound mind under any law in force in Anguilla; or
  - (c) is disqualified for registration as a voter by any law in force in Anguilla relating to offences connected with elections.
- (2) For the purposes of paragraph (a) of the preceding subsection—
- (a) two or more terms of imprisonment that are required to be served consecutively shall be regarded as a single term of imprisonment for the aggregate period of those terms; and
  - (b) no account shall be taken of a sentence of imprisonment imposed as an alternative to, or in default of the payment of, a fine.

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

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

- (a) because he is a returning officer; or
  - (b) because he has been concerned in any offence connected with elections.
- (2) No person shall vote at any election for any electoral district who—
- (a) is not registered as a voter in that district;
  - (b) has voted in another electoral district at the same election;
  - (c) is in lawful custody; or
  - (d) is for any other reason unable to attend to vote in person (except in so far as it may be provided by law that persons unable so to attend may vote).

### **Laws as to elections**

**46.** Subject to the provisions of this Constitution, the Legislature may provide for the election of members of the Assembly, including (without prejudice to the generality of the foregoing power) the following matters, that is to say—

- (a) the qualifications and disqualifications of voters;

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<sup>41</sup> S. 18 of S.I. 1990/587

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

## CHAPTER V

### POWERS AND PROCEDURE IN HOUSE OF ASSEMBLY

#### **Power to make laws**

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

#### **Royal Instructions**

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

#### **Rules of procedure**

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

#### **Presiding in Assembly**

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

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

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

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

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

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

(6) References in subsection (5) of this section to circumstances in which the Speaker or Deputy Speaker is absent include references to circumstances in which the office of Speaker or Deputy Speaker is vacant.<sup>42</sup>

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

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

### **Quorum**

**52.** (1) If at any sitting of the Assembly a quorum is not present and any member of the Assembly who is present objects on that account to the transaction of business and, after such interval as may be

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<sup>42</sup> S. 19 of S.I. 1990/587

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

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

### **Voting**

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

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

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

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

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

### **Introduction of Bills**

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

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

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

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

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

Bill or to carry the motion within such time and in such form as the Governor thinks reasonable and expedient, the Governor, acting in his discretion, may, at any time that he thinks fit, and notwithstanding any provision of this Constitution or of any other law in force in Anguilla or of any rules of procedure of the Assembly declare that the Bill or motion shall have effect as if it had been passed or carried by the Assembly either in the form in which it was introduced or proposed or with such amendments as the Governor thinks fit which have been moved or proposed in the Assembly or any Committee thereof; and the Bill or the motion shall be deemed thereupon to have been so passed or carried, and the provisions of this Constitution, and in particular the provisions relating to assent to Bills and disallowance of laws, shall have effect accordingly:<sup>43</sup>

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

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

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

(4) Any declaration made under this section other than a declaration relating to a Bill may be revoked by a Secretary of State and the Governor shall forthwith cause notice of the revocation to be published by notice in the Official Gazette; and from the date of such publication any motion that is deemed to have been carried by virtue of the declaration shall cease to have effect and the provisions of section 16(1) of the Interpretation Act 1978<sup>44</sup> shall apply to the revocation as they apply to the repeal of an Act of Parliament.

### Assent to Bills

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

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

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

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

- (a) any Bill which appears to him to be in any way repugnant to, or inconsistent with, the provisions of this Constitution; and

<sup>43</sup> S. 20 of S.I. 1990/587

<sup>44</sup> 1978 c. 30

- (b) any Bill which determines or regulates the privileges, immunities or powers of the Assembly or of its members,

unless he has been authorised by a Secretary of State to assent to it.

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

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

### **Disallowance of laws**

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

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

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

### **Oath of allegiance**

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

Provided that the election of a Speaker and Deputy Speaker of the Assembly may take place before the members thereof have made such oath.<sup>45</sup>

### **Registration of interests**

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

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

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

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

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<sup>45</sup> S. 21 of S.I. 1990/587

- (d) upon the disposal of any interest, asset or liability which has been entered in the Register of Interests.

(4) A law made under section 47 of this Constitution shall make provision for giving effect to this section.<sup>46</sup>

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

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

### **Sessions**

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

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

### **Prorogation and dissolution**

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

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

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

### **General elections**

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

## CHAPTER VI

### THE PUBLIC SERVICE

#### **Public Service—General**

### **Public Service Commission**

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

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<sup>46</sup> S. 22 of S.I. 1990/587

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

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

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

- (a) at the expiration of two years from the date of his appointment or such earlier times as may be specified in the instrument by which he was appointed;
- (b) if he resigns his office by writing under his hand addressed to the Governor;
- (c) if he becomes a member of, or a candidate for election to, the Assembly or is appointed to or to act in any public office; or
- (d) if the Governor, acting in his discretion, directs that he shall be removed from office for inability to discharge the functions thereof (whether arising from infirmity of body or mind or any other cause) or for misbehaviour.

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

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

(6) There shall be charged on the revenues of Anguilla and paid thereout to the members of the Public Service Commission such emoluments as may be prescribed by any law for the time being in force in Anguilla:

Provided that the emoluments of a member of the Commission shall not be reduced during his continuance in office.

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

**66.** (1) Power to make appointments to public offices and to remove and to exercise disciplinary control over persons holding or acting in such offices shall vest in the Governor, acting in his discretion in relation to the offices of Deputy Governor, Attorney-General and Chief Auditor and in relation to all other offices acting after consultation with the Public Service Commission.<sup>47</sup>

Provided that before appointing any person to any such other office being that of a permanent secretary or head of a department the Governor shall in addition consult with the Chief Minister.

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<sup>47</sup> S. 23 of S.I. 1990/587

(2) The Governor, acting after consultation with the Public Service Commission, may, by regulations published in the Official Gazette, delegate to any member of the Commission or any public officer or class of public officer, to such extent and subject to such conditions as may be prescribed in the regulations, any of the powers vested in him by the last foregoing subsection.

(3) The provisions of subsection (1) of this section shall not apply to—

- (a) any office to which section 68 of this Constitution applies; or
- (b) any office in the Police Force below the rank of Assistant Superintendent to the extent that the Chief of Police or some other officer of the Police Force is empowered by any law for the time being in force in Anguilla to exercise the powers mentioned in that subsection.

### **Judicial Service Commission**

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

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

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

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

(2) This section applies to the office of Magistrate, to any office in the public service of any registrar or other officer of the High Court who is required to possess legal qualifications and to such other offices in the public service, for appointment to which persons are required to possess legal qualifications, as may be prescribed by any law for the time being in force in Anguilla.

## **Pensions**

### **Applicability of pensions law**

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

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

- (a) in relation to an award granted before 1st April 1982 the day on which the award was granted;

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

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

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

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

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

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

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

### CHAPTER VII

#### MISCELLANEOUS

#### **Appeals to Her Majesty in Council**

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

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

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

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

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

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

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

### **Interpretation**

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

“Assembly” means the House of Assembly;

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

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

“functions” includes jurisdictions, powers and duties;

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

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

“Legislature” means the legislature established by Chapter V of this Constitution and includes Her Majesty in Council;

“public office” means, subject to the provisions of the next following subsection, an office of emolument in the public service;

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

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

“session” means the meetings of the Assembly commencing when the Assembly first meets after its prorogation or dissolution at any time, and terminating when the Assembly is prorogued or is dissolved without having been prorogued;

“sitting” means a period during which the Assembly is sitting continuously without adjournment and includes any period during which the Assembly is in committee.

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

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

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

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

(5) Without prejudice to the last foregoing subsection—

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

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

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

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

#### **Public Seal**

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

**Grants of land**

75. Subject to the provisions of any law for the time being in force in Anguilla, the Governor or any person duly authorised by him in writing under his hand may, in Her Majesty's name and on Her behalf, make and execute under the public seal grants and dispositions of any land or other immovable property within Anguilla that may be lawfully granted or disposed of by Her Majesty.

**Governor's power of pardon**

76. Subject to any Instructions given to him by Her Majesty under Her Sign Manual and Signet, the Governor may, in Her Majesty's name and on Her behalf—

- (a) grant to any person concerned in the commission of any offence for which he may be tried in Anguilla, or to any person convicted of any offence under any law in force in Anguilla, a pardon, either free or subject to lawful conditions;
- (b) grant to any person so convicted a respite, either indefinite or for a specified period, of the execution of any sentence passed on him in respect of the conviction;
- (c) substitute a less severe form of punishment for that imposed on any such person by any such sentence; or
- (d) remit the whole or any part of any such sentence or of any penalty or forfeiture due to Her Majesty by reason of the conviction.

**Offices and appointments**

77. The Governor, in Her Majesty's name and on Her behalf, may constitute such offices for Anguilla as may lawfully be constituted by Her Majesty and, subject to the provisions of any law in force in Anguilla, may make appointments (including appointments on promotion and transfer) to any such office; and any person so appointed shall, unless it is otherwise provided by any such law, hold office during Her Majesty's pleasure.

**Discipline**

78. (1) Subject to the provisions of any law in force in Anguilla, the Governor may for cause shown to his satisfaction dismiss or suspend from the exercise of his office any person holding a public office, or take such disciplinary action as may seem to him to be desirable.

(2) The reference in this section to the power to dismiss any person holding a public office shall be construed as including a reference to any power to require or permit a person to retire.

**Chief Auditor**

79. (1) There shall be a Chief Auditor whose office shall be a public office.

(2) The accounts of the Assembly and all government departments and offices (including the Public Service Commission) shall be audited and reported on annually by the Chief Auditor, and for that purpose the Chief Auditor or any person authorised by him in that behalf shall have access to all books, records, returns and other documents relating to such accounts.

(3) The Chief Auditor shall submit his reports made under subsection (2) of this section to the Speaker of the Assembly who shall cause them to be laid before the Assembly; and the Chief Auditor shall also send a copy of each report to the Governor.

(4) In the exercise of his functions under this section, the Chief Auditor shall not be subject to the direction or control of any other person or authority.<sup>48</sup>

### **Belonger status**

**80.** (1) There shall be an Anguilla Belonger Commission (hereinafter referred to as “the Commission”), the composition and functions of which shall, subject to the provisions of this section, be prescribed by law.

(2) For the purposes of this Constitution a person shall be regarded as belonging to Anguilla if that person—

- (a) is a British Dependent Territories citizen—
  - (i) who was born in Anguilla, whether before or after the commencement of the British Nationality Act 1981; or if not so born
  - (ii) who was adopted in Anguilla; or
  - (iii) whose father or mother was born in Anguilla; or
  - (iv) whose father or mother became a British Dependent Territories citizen by virtue of having been adopted in Anguilla; or
  - (v) who is domiciled in Anguilla and whose father or mother by virtue of registration or naturalisation while resident in Anguilla became a British Dependent Territories citizen at the commencement of the British Nationality Act 1981 (or would have done so but for his or her death) or so became such a citizen after such commencement of the said Act; or
  - (vi) who by virtue of registration or naturalisation while resident in Anguilla became such a citizen at or after the commencement of the British Nationality Act 1981; or
- (b) is domiciled in Anguilla, has been ordinarily resident in Anguilla for not less than fifteen years, and has been granted belonger status by the Commission; or
- (c) was born in Anguilla of a father or mother who was born in Anguilla and who is regarded (or, if deceased, would if alive be regarded) as belonging to Anguilla by virtue of this subsection; or
- (d) was born outside Anguilla and has satisfied the Commission that his father or mother was born in Anguilla and is regarded (or, if deceased, would if alive be regarded) as belonging to Anguilla by virtue of this subsection; or

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<sup>48</sup> S. 24 of S.I. 1990/587

- (e) is the spouse of such a person as is referred to in any of the preceding paragraphs of this subsection and has been married to that person for not less than five years; or
  - (f) is the spouse of such a person as is referred to in paragraph (a), (b), (c) or (d) of this subsection, has been married to such a person for not less than three years, and has been granted belonger status by the Commission.<sup>49</sup>
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<sup>49</sup> S. 25(2) of S.I. 1990/587

**THE SCHEDULE TO THE CONSTITUTION**

## FORMS OF OATHS AND AFFIRMATIONS

**Sections 19(4), 30 and 60**1. *Oath of Allegiance*

I ..... do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, according to law. So help me God.

2. *Oath for due execution of office*

I ..... do swear that I will well and truly serve Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, in the office (*here insert the description of the office*). So help me God.

3. *Affirmations*

In the forms above respectively set forth, for the word “swear” there shall be substituted the words “solemnly and sincerely affirm and declare”, and the words “So help me God” shall be omitted.

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## UNCONSOLIDATED PROVISION

Section 26 of S.I. 1990/587

**Transitional provisions**

**26.** (1) The persons who, immediately before the commencement of this Order, are the nominated members of the Assembly shall be deemed, on and after such commencement, to have been appointed as nominated members in accordance with section 35 of the Constitution as amended by this Order.

(2) The person who, immediately before the commencement of this Order, holds the office of Speaker of the Assembly shall be deemed, on and after such commencement, to have been elected to that office in accordance with section 50 of the Constitution as amended by this Order.

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