ANGUILLA

REVISED STATUTES OF ANGUILLA

CHAPTER A72

ANGUILLIAN STATUS ACT

Showing the Law as at 31 December 2022

This Edition was prepared under the authority of the Revised Statutes and Regulations Act, R.S.A. c. R55 by the Attorney General as Law Revision Commissioner.

This Edition revises Act 1/2020, in force 21 February 2020

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ANGUILLIAN STATUS ACT

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ANGUILLIAN STATUS ACT

PART 1

PRELIMINARY PROVISIONS

Interpretation

1. In this Act—

"Anguillian status" has the same meaning as set out in section 12(3) of the 2019 Order as reproduced in Schedule 1;

"chairperson" means the chairperson of Anguillian Status Commission;

"citizenship" includes a reference, where appropriate, to British Subjects, citizenship of the United Kingdom and Colonies, British Dependent Territories citizenship or British Overseas Territories citizenship;

"Commission" means the Anguillian Status Commission;

"constitutional provisions" means the following provisions, which have been reproduced in Schedule 2—

(a) Belonger Provisions in the Anguilla (Constitution) Order 1976 No. 50 (section 18(5));

(b) Belonger Provisions in the Anguilla Constitution Order 1982 No. 334;

(c) Belonger Provisions in the Anguilla Constitution (Amendment) Order 1990 No. 587; and

(d) the provisions of the 2019 Order;

"immigration laws" refers to the various laws and policies governing immigration and labour including the—

(a) Immigration and Passport Act;

(b) Work Permit Regulations; and

(c) Labour (Relations) Act, 2018 No. 14/2018;

"indictable offence" includes an offence triable either way in accordance with the Magistrate's Code of Procedure Act;

"Minister" means the Minister responsible for Immigration;

"Ministry" means the ministry responsible for Immigration;

"permanent secretary" means the permanent secretary responsible for Immigration;

"2019 Order" means the Anguilla Constitution (Amendment) Order 2019 No. 852.

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Domicile

2. Notwithstanding any law to the contrary, domicile is satisfied if the applicant demonstrates that he or she has made Anguilla their permanent abode.

Continuous period of residency

3. (1) In determining Anguillian status under the 2019 Order, a reference to the term "continuous period" means—

(a) where the requirement is 5 years, that for 5 years ending with the date of the application, the number of days the applicant was absent from Anguilla does not exceed 180 days for each year;

(b) where the requirement is 15 years, that for 15 years ending with the date of the application, the number of days the applicant was absent from Anguilla does not exceed 120 days for each year;

(c) where the requirement is for 3 years, that for 3 years ending with the date of the application, the number of days the applicant was absent from Anguilla does not exceed 120 days for each year; and

(d) where the requirement is for 10 years, that for 10 years ending with the date of the application, the number of days the applicant was absent from Anguilla does not exceed 180 days.

(2) The Commission may waive the requirements under subsection (1) where the Commission is satisfied that the applicant is permanently resident in Anguilla but the applicant—

(a) sought medical attention overseas or accompanied a person who sought medical attention overseas;

(b) pursued post-secondary or tertiary studies at a school or university overseas;

(c) was overseas on work-related matters or performing a civic duty or function; or

(d) was overseas on behalf of the Crown.

Residency and the payment of fees

4. (1) In accordance with the constitutional provisions, the term "residency" means that during the period of time that the applicant lived in Anguilla, the applicant was not in breach of immigration laws.

(2) Notwithstanding subsection (1), to meet the justice of a case, the Commission may recommend that the Executive Council vary or waive any fee under immigration laws.

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PART 2

ACQUISITION AND ADMINISTRATION OF ANGUILLIAN STATUS

Acquisition of Anguillian status

5. Anguillian status may be acquired in the following 2 manners—

(a) automatically, in that persons who satisfy requirements as stated in sections 12(3)(a) to (d) of the 2019 Order are regarded as being Anguillian; or

(b) grant by the Commission in accordance with section 12(3)(e) of the 2019 Order.

Role of Chief Immigration Officer and chairperson

6. (1) The Chief Immigration Officer is responsible for administering the procedure in relation to persons who are automatically regarded as being Anguillian.

(2) Where the Chief Immigration Officer considers that an applicant may meet the requirements for being regarded as Anguillian in accordance with section 5(a), the Chief Immigration Officer shall, on payment of the prescribed fee, forward the file to the chairperson.

(3) Where a file is forwarded to the chairperson, the chairperson shall—

(a) determine whether the applicant meets the requirements for being regarded as Anguillian; and

(b) if satisfied that the applicant meets the requirements for being regarded as Anguillian, issue the applicant with a general certificate of Anguillian status on behalf of the Commission.

(4) From time to time, the Chief Immigration Officer may—

(a) forward a file in relation to subsection (1) to the Commission for guidance on whether an applicant automatically meets the requirement for being regarded as Anguillian; and

(b) act in accordance with the guidance received from the Commission.

(5) The Chief Immigration Officer assists the Commission in performing its role by compiling and forwarding files that must go before the Commission for a grant of Anguillian status.

(6) In accordance with the regulations and on payment of the prescribed fee, the Chief Immigration officer may by letter certify that a person is an Anguillian.

Functions of the Commission

7. (1) In accordance with the 2019 Order, the Commission shall be responsible for—

(a) reviewing applications for Anguillian status and deciding whether the applicant meets the requirements to be granted Anguillian status;

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(b) granting Anguillian status to applicants whom they determine meet the requirements for Anguillian status;

(c) issuing certificates of Anguillian status to persons to whom they have granted that status; and

(d) on request by the Chief Immigration Officer, providing guidance on whether an applicant automatically meets the requirements for being regarded as Anguillian.

(2) In determining whether an applicant should be granted Anguillian status, the Commission must have regard to the following matters relating to the applicant—

(a) place of birth;

(b) date of birth;

(c) lineal descent;

(d) place of birth of parents, grandparents and great-grandparents;

(e) citizenship;

(f) domicile and residency;

(g) marriage to an Anguillian;

(h) immigration status; and

(i) character.

Withdrawal of Anguillian status

8. (1) The Commission may withdraw Anguillian status under subsection (2) from a person who is convicted of an indictable offence by a court of Anguilla.

(2) Where the Commission receives a police record or a notice of conviction from the Attorney-General, the Commission may withdraw Anguillian status—

(a) from a person who was granted that status after residing in Anguilla for a continuous period of 15 years;

(b) at any time from a person who was born outside Anguilla and who was granted Anguillian status on the basis of being a child under the age of 18 years of a person who was granted Anguillian status after 15 years of residency and that child also resided in Anguilla for a continuous period of 3 years; and

(c) from a person who was granted Anguillian status after 5 years of marriage.

(3) In deciding whether to withdraw Anguillian status the Commission may request a report from the Attorney-General, the Parole Board, the Department responsible for Social Services or any other relevant government department or agency.

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(4) The Commission shall conduct a hearing before deciding to withdraw Anguillian status.

(5) Anguillian status shall be withdrawn from the day the Commission makes its decision and a notice of the withdrawal of Anguillian status shall be served immediately on the person from whom the Anguillian status was withdrawn.

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

PART 3

ESTABLISHMENT AND ADMINISTRATION OF COMMISSION

Establishment and membership of the Commission

9. (1) The Commission is established in the Ministry and shall consist of the following members—

(a) 3 *ex-officio* members, namely—

(i) the permanent secretary to the Minister responsible for Immigration,

(ii) the Chief Immigration Officer, and

(iii) the Attorney-General; and

(b) 2 members appointed as follows—

(i) one member appointed by the Minister, and

(ii) one member appointed by the Minister acting on the advice of the Leader of the Opposition.

(2) Each *ex-officio* member may delegate the performance of their duties under this Act to a public officer in their respective departments.

(3) The appointments made under subsection (1)(b) shall be for a term of up to 5 years and shall be published in the *Gazette*.

(4) A person appointed under subsection (1)(b) is disqualified for appointment or from continuing as a member if that person is a member of the House of Assembly or a public officer.

(5) Where a member of the Commission appointed under subsection (1)(b) dies, resigns or is removed from office, a person may be appointed for the balance of the member's term in accordance with this section.

(6) Where a person appointed under subsection (1)(b) is temporarily unable to perform the duties of the office, the Minister may appoint a temporary replacement following the procedure in that subsection.

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(7) Any appointed member who vacates his office, other than a member who is removed from office under subsection (5), shall be eligible for reappointment.

(8) Any appointed member of the Commission may at any time resign his office by letter addressed to the Minister.

(9) No act or proceeding of the Commission shall be deemed to be invalid by reason only of the existence of a vacancy among its members or a defect in the appointment of any member thereof.

(10) The Executive Council may, if it considers it expedient to do so, remove any appointed member of the Commission by order published in the *Gazette*.

Chairperson of the Commission

10. (1) The permanent secretary is the chairperson of the Commission and shall preside at all meetings of the Commission.

(2) If the chairperson is absent then the members of the Commission present at the meeting shall elect a member to preside at the meeting.

Quorum, decision and determination of the Commission

11. (1) Any 3 members of the Commission (at least one of whom shall be an appointed member) shall constitute a quorum at any meeting of the Commission, but the chairperson shall, as far as practicable, ensure that all 5 members are present at any meeting at which, in his opinion, difficult or important matters are to be considered.

(2) Every question before the Commission shall be determined by the opinion of the majority of the members (including the chairperson) present at the meeting of the Commission.

Remuneration of members

12. The members of the Commission shall be remunerated in such manner and at such rates as may be determined by the Executive Council.

Commission to regulate procedure

13. (1) Where this Act is silent, the Commission may develop and regulate its own procedure in order to efficiently and effectively transact the business of the Commission.

(2) Any decision of the Commission shall be final and conclusive and shall not be called in question before any court of law.

Applications for Anguillian status

14. A person who desires the Commission to grant him or her Anguillian status must apply to the Commission in the prescribed form and manner and must pay the prescribed fees.

Hearing of an application

15. (1) The Commission may grant Anguillian status and issue certificates of Anguillian status without the need for a hearing.

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(2) Where the Commission determines that a hearing is necessary to perform its functions, the Chairperson shall fix the time, date and place of hearing of the application.

(3) Notice of a hearing shall be served on the applicant at least 14 days before the date of the hearing.

(4) Subject to subsection (5), an applicant shall appear in person at any hearing of the Commission.

(5) Where an applicant indicates that he or she would not be able to attend a hearing in person and the Commission considers that the reasons for the applicant doing so are cogent, the Commission may proceed to determine the matter in the absence of an applicant who is represented.

(6) To avoid doubt, the word 'represented' under subsection (5) includes but is not limited to legal counsel.

Powers during a hearing

16. (1) In conducting hearings the Commission may—

(a) receive evidence as may be furnished by an applicant and examine all persons who appear as witnesses before it;

(b) require the evidence of any witness to be given on oath or affirmation and to administer an oath or affirmation to a witness;

(c) where it is appropriate to do so, dispense with the taking of the oath or affirmation; and

(d) admit any evidence which might be inadmissible in any court in civil or criminal proceedings.

(2) The Commission may, for the purposes of any hearing, direct or allow a person to make a written submission or a submission by way of video link, audio link, email or other appropriate technological means.

(3) The Commission shall only exercise the power under subsection (2) if it is satisfied—

(a) of the standard of the transmission; and

(b) of the quality of communication and the security of the electronic link; and

(c) in relation to a video link, that the parties can clearly see and hear each other; and

(d) in relation to an audio link, that the parties can clearly hear each other.

(4) Each person who gives evidence before the Commission shall be entitled to all the privileges of a witness giving evidence before a court of law.

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Electronic documents

17. (1) Where a written document, record or information is required under this Act that requirement may be met by information in electronic form.

(2) A requirement under this Act that a person provide information in a prescribed paper format or other non-electronic form to another person is satisfied by providing the information in an electronic form that—

(a) contains the same or substantially the same information as the prescribed paper format or other non-electronic form;

(b) is accessible to the other person so as to be usable or retrievable for subsequent reference; and

(c) is capable of being retained.

Request for affidavit and DNA evidence

18. The Chief Immigration Officer or the Commission may request further evidence in the form of affidavits or DNA proof where—

(a) the records at the Immigration Department or other government department are insufficient or could not be located;

(b) information provided in the file or a document is unsatisfactory;

(c) the design and layout of the document or the information provided in a document leads to a suspicion that the document may be fraudulent; or

(d) better evidence of residency is necessary; or

(e) there is a need to establish parentage.

Register

19. (1) The Commission shall keep and maintain a register of persons who—

(a) are granted Anguillian status by the Commission;

(b) received waiver of the continuous period requirement;

(c) received a waiver for the payment of immigration fees; or

(d) had their Anguillian status withdrawn.

(2) The register is a public document and shall be made available for inspection at the request of a member of the public.

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Replacement of Anguillian status certificate

20. If an Anguillian status certificate is destroyed, lost or defaced, the persons responsible for its safe custody may apply to the Immigration Department for a replacement certificate.

Offences against the Commission and penalties

21. Any person who—

(a) insults or disturbs a member of the Commission in the exercise of his powers or functions as a member,

(b) interrupts the proceedings of the Commission,

(c) creates a disturbance or takes part in creating or continuing a disturbance in or near a place where the Commission is meeting, or

(d) falsifies any document or provides false information to the Commission in writing or orally,

commits an offence and is liable on summary conviction to a fine of $2,000 or to imprisonment for a term of 3 months.

Immunity of the members of the Commission

22. No civil or criminal proceedings shall be instituted against any member of the Commission for any act done or omitted to be done by him in good faith as such member.

PART 4

MISCELLANEOUS PROVISIONS

Regulations

23. (1) The Executive Council may make regulations for giving effect to any of the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the Executive Council may make regulations—

(a) prescribing matters required or permitted to be prescribed by this Act;

(b) providing for matters as may be—

(i) contemplated by or necessary for giving full effect to this Act and for its administration, or

(ii) incidental to or consequential upon any provision of this Act;

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(c) prescribing fees to be charged for—

(i) applications for Anguillian status,

(ii) certificates of Anguillian status,

(iii) letters certifying Anguillian status,

(iv) replacing certificates of Anguillian status, and

(v) other administrative matters of the Commission;

(d) prescribing application forms and certificates of Anguillian status;

(e) prescribing electronic documents that would be used to facilitate any aspect of Anguillian status;

(f) providing for penalties; and

(g) providing for transitional measures to revive and administer files which have been closed at the Immigration Department.

Citation

24. This Act may be cited as the Anguillian Status Act, Revised Statutes of Anguilla, Chapter A72.

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SCHEDULE 1

(Section 1)

ANGUILLIAN STATUS

THE ANGUILLA CONSTITUTION (AMENDMENT) ORDER 2019 NO. 852

ANGUILLIAN STATUS PROVISIONS SECTION 12(3)

Coming into force on the 14th day of May, 2019

For the purposes of this Constitution a person shall be regarded as an Anguillian if that person—

(a) is a person born or adopted in or outside Anguilla and who has at least one parent or grandparent who was born or adopted in Anguilla, where such parent or grandparent is regarded as being an Anguillian by virtue of this Constitution or is regarded as belonging to Anguilla by virtue of any previous Constitution;

(b) is regarded as belonging to Anguilla by virtue of this Constitution (as in force before the commencement of the Anguilla Constitution (Amendment) Order 2019) or of any previous Constitution;

(c) is a British overseas territories citizen having been born or adopted in Anguilla or having become such a citizen by virtue of registration or naturalisation while resident in Anguilla;

(d) is a British overseas territories citizen domiciled in Anguilla and whose father or mother by virtue of registration or naturalisation while resident in Anguilla became a British Dependent Territories citizen at the commencement of the British Nationality Act 1981(a) (or would have done so but for his or her death) or so became such a citizen after the commencement of that Act;

(e) has been granted Anguillian status by the Commission on the basis that that person—

(i) is a great-grandchild of a person born in Anguilla and who is regarded as being an Anguillian by virtue of this Constitution or is regarded as belonging to Anguilla by virtue of any previous Constitution, where the great-grandchild has resided in Anguilla for a continuous period of at least five years, or

(ii) has resided in Anguilla for a continuous period of at least 15 years, or

(iii) is born in Anguilla and is a child under the age of 18 years of a person referred to in subparagraph (ii), or

(iv) is born outside Anguilla and is a child under the age of 18 years of a person referred to in subparagraph (ii), where the child has resided in Anguilla for a continuous period of at least three years, or

(v) is born in Anguilla and does not qualify under any of the foregoing provisions of this subsection, but has resided in Anguilla for a continuous period of at least ten years, or

(vi) is married to an Anguillian and has been so married for at least five years.

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SCHEDULE 2

(Section 1)

CONSTITUTIONAL PROVISIONS

THE ANGUILLA (CONSTITUTION) ORDER 1976, NO. 50

BELONGER PROVISIONS SECTION 18(5)

Coming into force on 10th February 1976

For the purposes of this Chapter a person shall be regarded as belonging to Anguilla if that person is—

(a) a citizen of the United Kingdom and Colonies born in Anguilla; or

(b) a citizen of the United Kingdom and Colonies born outside Anguilla—

(i) whose father or mother was born in Anguilla, or

(ii) who is domiciled in Anguilla and whose father or mother became a citizen of the United Kingdom and Colonies by virtue of naturalisation or registration in Anguilla; or

(c) a citizen of the United Kingdom and Colonies by virtue of having been naturalised or registered as such in Anguilla; or

(d) a Commonwealth citizen who is domiciled in Anguilla and has been ordinarily resident in Anguilla for not less than seven years; or

(e) the spouse, widow or widower of such a person referred to in any of the preceding paragraphs of this subsection, and, in the case of a spouse, is not living apart from the other spouse under a decree of a competent court or a deed of separation; or

(f) under the age of eighteen years and is the child, stepchild, or child adopted in a manner recognised by law, of such a person as is referred to in any of the preceding paragraphs of this subsection.

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THE ANGUILLA CONSTITUTION ORDER 1982 NO. 334

BELONGER PROVISIONS SECTION 18(5)

Coming into force on 1st April 1982

For the purposes of this Chapter a person shall be regarded as belonging to Anguilla if that person is—

(a) 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 commencement of the British Nationality Act 1981; or

(b) a Commonwealth citizen who is domiciled in Anguilla and has been ordinarily resident in Anguilla for not less than fifteen years; or

(c) the wife or widow of such a person referred to in any of the preceding paragraphs of this subsection, and, in the case of a wife, is not living apart from the husband under a decree of a competent court or a deed of separation; or

(d) under the age of eighteen years and is the child, stepchild, or child adopted in a manner recognised by law, of such a person as is referred to in any of the preceding paragraphs of this subsection.

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THE ANGUILLA CONSTITUTION (AMENDMENT) ORDER 1990 NO. 587

BELONGER PROVISIONS SECTION 25(2)

Coming into force on 30th May 1990

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

(a) is a British Dependent Territories citizen—

(i) who was born in Anguilla, whether before or after the commencement of the British Nationality Act 1981, or if not so born

(ii) who was adopted in Anguilla, or

(iii) whose father or mother was born in Anguilla, or

(iv) whose father or mother became a British Dependent Territories citizen by virtue of having been adopted in Anguilla, or

(v) who is domiciled in Anguilla and whose father or mother by virtue of registration or naturalisation while resident in Anguilla became a British Dependent Territories citizen at the commencement of the British Nationality Act 1981 (or would have done so but for his or her death) or so became such a citizen after such commencement of the said Act, or

(vi) who by virtue of registration or naturalisation while resident in Anguilla became such a citizen at or after the commencement of the British Nationality Act 1981; or

(b) is domiciled in Anguilla, has been ordinarily resident in Anguilla for not less than fifteen years, and has been granted belonger status by the Commission; or

(c) was born in Anguilla of a father or mother who was born in Anguilla and who is regarded (or, if deceased, would if alive be regarded) as belonging to Anguilla by virtue of this subsection; or

(d) was born outside Anguilla and has satisfied the Commission that his father or mother was born in Anguilla and is regarded (or, if deceased, would if alive be regarded) as belonging to Anguilla by virtue of this subsection; or

(e) is the spouse of such a person as is referred to in any of the preceding paragraphs of this subsection and has been married to that person for not less than five years; or

(f) is the spouse of such a person as is referred to in paragraph (a), (b), (c) or (d) of this subsection, has been married to such a person for not less than three years, and has been granted belonger status by the Commission.

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THE ANGUILLA CONSTITUTION (AMENDMENT) ORDER 2019 NO. 852

ANGUILLIAN STATUS SECTION 12(3)

Coming into force on the 14th day of May, 2019

For the purposes of this Constitution a person shall be regarded as an Anguillian if that person—

(a) is a person born or adopted in or outside Anguilla and who has at least one parent or grandparent who was born or adopted in Anguilla, where such parent or grandparent is regarded as being an Anguillian by virtue of this Constitution or is regarded as belonging to Anguilla by virtue of any previous Constitution;

(b) is regarded as belonging to Anguilla by virtue of this Constitution (as in force before the commencement of the Anguilla Constitution (Amendment) Order 2019) or of any previous Constitution;

(c) is a British overseas territories citizen having been born or adopted in Anguilla or having become such a citizen by virtue of registration or naturalisation while resident in Anguilla;

(d) is a British overseas territories citizen domiciled in Anguilla and whose father or mother by virtue of registration or naturalisation while resident in Anguilla became a British Dependent Territories citizen at the commencement of the British Nationality Act 1981(a) (or would have done so but for his or her death) or so became such a citizen after the commencement of that Act;

(e) has been granted Anguillian status by the Commission on the basis that that person—

(i) is a great-grandchild of a person born in Anguilla and who is regarded as being an Anguillian by virtue of this Constitution or is regarded as belonging to Anguilla by virtue of any previous Constitution, where the great-grandchild has resided in Anguilla for a continuous period of at least five years, or

(ii) has resided in Anguilla for a continuous period of at least 15 years, or

(iii) is born in Anguilla and is a child under the age of 18 years of a person referred to in subparagraph (ii), or

(iv) is born outside Anguilla and is a child under the age of 18 years of a person referred to in subparagraph (ii), where the child has resided in Anguilla for a continuous period of at least three years, or

(v) is born in Anguilla and does not qualify under any of the foregoing provisions of this subsection, but has resided in Anguilla for a continuous period of at least ten years, or

(vi) is married to an Anguillian and has been so married for at least five years.

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