

THE COMMISSION'S RECOMMENDATIONS

THE ORDER

1. The Order is the legal instrument signed by or on behalf of the Queen in Council. The Constitution is the contract approved by the people of Anguilla and which sets out the terms on which they agree to be governed by the Executive. The present Constitution of Anguilla is a Schedule to an Order of 1982¹.
2. The 1982 Order is very unsatisfactory. It is to be hoped that the faults that appear in it will not be repeated. For example, it contains certain provisions that must be read in conjunction with the Constitution before the terms of the Constitution can be understood². The two documents have to be read side by side for certain provisions to be understood. This is perfectly sensible for a lawyer. It is not so for a layman. The Order contains provisions that do not even make sense³.
3. The Commission **recommends** that there should be no provision in the new Order placing a gloss or interpretation on any part of the Constitution: the Constitution should be self-contained, whole and entire.



¹ The Anguilla Constitution Order 1982, Statutory Instrument 1982 No 334.

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

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

THE PREAMBLE

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



CHAPTER 1: PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS

6. **Advanced Provision.** Unlike the British Virgin Islands and the Cayman Islands, Anguilla enjoys an advanced provision for the protection of fundamental rights and freedoms in Chapter 1 of the present Constitution. The issue of such a provision is therefore not as urgent as it is in those territories.
7. **Henry Steel's Model.** The Commission has considered the Model⁴ prepared by Mr Henry Steel for the Overseas Territories. Mr Steel also supplied Explanatory Notes. The Commission also considered the recommendations of the Montserrat⁵, BVI⁶, and Cayman⁷ Commissioners; the suggestions coming out of the town hall meetings held by the Constitutional Reform Committee during the period 2001-2003; and the various suggestions and comments made at public meetings, on radio and television, and in meetings with various NGOs, and on the Commission's website during the period of the work of the Commission⁸.
8. **Present Chapter Preferred.** The Commission concluded that the Model was not suitable for adoption in Anguilla for a number of reasons. First, the present Anguilla Constitution already has an advanced Chapter dealing with Fundamental Rights. The Commission sees no reason to confuse citizens by recommending the adoption of an entirely new set of Fundamental Rights. Second, in the aftermath of the United Kingdom's imposition of a law repealing offences relating to homosexual acts among men, there are in the Anguillian community doubts about the *bona fides* of those recommending the adoption of an entirely new Chapter: there are serious concerns that the urge to review the Human Rights aspects of the Constitution is prompted by a European desire to impose foreign and unacceptable social norms. The Model attempts to introduce "rights" that are objectionable to a majority of Anguillians. Examples are sections 10 [*Protection of the Right to Marry*]; and 12 [*Protection of the Right to Education*]. The *Right to Marry* appears to be worded in language intended to introduce a right for members of the same sex to marry each other, a notion which is objectionable to a majority. The *Right to Education* as proposed would impose an obligation to provide free primary education for the children of all persons living in Anguilla. That is a right that a majority would want to see extended only to Anguillians. Anguilla cannot afford to provide free education to the children of all the temporary

⁴ Draft Model Chapter on Fundamental Rights, 15 May 2001.

⁵ Montserrat: Report of the Constitutional Commissioners 2002.

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

⁷ Report of the Constitutional Modernisation Review Commissioners 2002.

⁸ For a list of the Commission's consultations, see page 25.

residents of Anguilla. Third, there have been pleas made that both the present Constitution and the Model Draft⁹ are written in dense and incomprehensible language not able to be understood by the man in the street. In this respect, the Model will do nothing to improve public appreciation and knowledge of the fundamental rights enjoyed by Anguillians: it is written in even denser and more incomprehensible language than the present Chapter 1. In the circumstances, the Commission **recommends** the rejection of the proposed draft Model Chapter on Fundamental Rights. All that is required is the amendment of a few of the sections of the present Chapter 1 to make them more reflective of modern norms and expectations.

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

Section 1: Fundamental Rights and Freedoms of the Individual.

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

Section 2: Protection of Right to Life.

11. Section 2(1) as presently worded¹⁰ is out of date. Its wording precedes the abolition of the death penalty for murder in Anguilla. To the extent that the death penalty still exists for such offences as treason or intentionally burning one of Her Majesty's ships, it is archaic and should be abolished. During the review process the Commission received no representation that the penalty should be retained. The Commission **recommends** that the section should be amended to delete the reference to the death penalty.

Section 3: Protection of Right to Personal Liberty.

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

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

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

has been brought to a police station, to be told of his rights¹¹. The Commission **recommends** that should be a new sub-section setting out this right in the clearest language.

13. **To Be Brought Before a Court.** The present section 3(3) provides that a person arrested shall be brought before a court “without delay.” This phrase is ambiguous and has caused much distress in the past. It is not the wording found in more advanced Commonwealth Caribbean Constitutions¹². “Without delay” should be replaced by “within forty eight hours” and the Commission so **recommends**.

Section 4: Protection from Slavery and Forced Labour.

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

Section 5: Protection of Freedom of Movement.

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

Section 6: Protection from Inhuman Treatment.

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

Section 7: Protection from Deprivation of Property.

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

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

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

¹³ Chapter U5 of the Revised Statutes of Anguilla.

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

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

CHAPTER 2: THE GOVERNOR

Section 19: The Governor.

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

Section 19A: The Deputy Governor.

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

Section 20: Acting Governor.

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

Section 21: Governor's Deputy.

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

CHAPTER 3: THE EXECUTIVE

Section 22: Executive Authority for Anguilla.

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

Section 23: Executive Council.

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

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

Section 24: Appointment of Ministers.

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

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

Section 24A: Appointment of Parliamentary Secretary.

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

Section 25: Tenure of Office of Members.

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

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

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

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

Section 27: Assignment of Responsibilities to Ministers.

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

Section 28: Governor to Consult Council.

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

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

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

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

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

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

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

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

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

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

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

54. **Ouster of Court.** Section 28(3) provides that the question whether the Governor has exercised a function either on the advice of or after consultation with any person shall not be enquired into in any court. The person whom the Governor is normally required to consult is the Premier or his Cabinet. On occasion there is provision for the Governor to act on the advice of a Secretary of State. There has been no representation made to the Commission that any alteration should be made to the provision relating to action on the advice of the Secretary of State. By contrast, no one making representations to the Commission defended the retaining of this clause ousting jurisdiction of the court to enquire whether the Governor had in fact consulted with or acted on the advice of Cabinet or the Premier or other local entity with whom he may be required to consult. It was the unanimous view among the persons making representations on this sub-section that this provision is undemocratic, and should be removed in so far as it relates to local consultation. The Commission **recommends** that the ouster clause should be retained only in relation to consultation with the Secretary of State.
55. **Governor's Responsibility for Administration of Reserved Powers and Public Service.** Sub-sections (4), (5) and (6) provide that the Governor shall be responsible for the conduct of government business and the administration of any Department of government with respect to the matters set out in paragraphs (a) and (b) of sub-section (2) as set out above. In practical terms, this means the International Financial Services industry, the Public Administration, and the Royal Anguilla Police Force.
56. **Administration of International Financial Services.** So far as the International Financial Services industry is concerned, this is the second most important industry in Anguilla after Tourism. In the year 1990, the supervision and administration of the industry was¹⁴ taken away from the local Ministry of Finance and vested in the Governor in the aftermath of the international financial scandal involving the Bank of Commerce and Credit International. Since then, an adequate regulatory framework has been put in place in Anguilla. The industry is now supervised by an independent Financial Services Commission established by law¹⁵. A host of new laws providing for standards to be kept and creating a multitude of regulations and related offences has been put in place to ensure that the industry is properly run. In the unlikely event that it may once again become necessary for HMG to take over direct responsibility for this industry, the power to do so always remains by the use of a Statutory Instrument. It was generally agreed by all persons consulted by the Commission, except the Governor's Office, that there was no longer any justification for this area to remain one of the Governor's responsibilities.

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

¹⁵ The Financial Services Commission Act, Chapter F28 of the Revised Statutes of Anguilla.

- The Commission **recommends** that responsibility for the administration of international financial services be removed from the Governor's portfolio.
57. **Supervision of International Financial Services.** It is generally agreed that Anguilla benefits internationally from the Governor's power of supervision of the industry. It is to our advantage to be able to claim that the industry is subject to a higher supervision than can be provided locally. The Governor's power to supervise is in practice carried out by the Financial Services Commission.
58. **Constitutional Recognition of the Financial Services Commission.** By the **Financial Services Commission Act**¹⁶ the House of Assembly of Anguilla established the Financial Services Commission (FSC) to supervise the financial services industry. The members of the FSC are appointed by the Governor and they report to the Governor. It is generally agreed that it is desirable that the Governor's office continue to be seen to be responsible for this aspect of the industry. The FSC is however not presently recognised under the Constitution. It was generally agreed that the FSC ought to be given constitutional recognition. The Commission **recommends** that the Constitution be amended to make provision for the FSC and for its governing law.
59. **Public Administration Department.** While the Public Administration Department is notionally under the direct control of the Governor, in practice he has for many years delegated this responsibility to the Deputy Governor.
60. **Public Service Commission:** There is a Public Service Commission, but its role under the Constitution and the enabling Act¹⁷ is purely advisory. The question has arisen whether the Governor should continue to exercise a notionally sole role in the management of the public administration. The consensus is that it should not. There is no one who has made a representation to the Commission that the public administration should be placed under the control of a Minister. The choice has been between the Deputy Governor and a strengthened Public Service Commission. The role in the public administration of the Deputy Governor takes on added significance when it is remembered that the Commission has recommended that the Constitution should state that the office of the Deputy Governor should be filled by an Anguillian. The Commission **recommends** that constitutional authority for the public service should be vested in the Deputy Governor with him being required to act on the advice of a much strengthened Public Service Commission.

¹⁶ Chapter F28 of the Revised Statutes of Anguilla.

¹⁷ Public Service Commission Act, Chapter P165 of the Revised Statutes of Anguilla.

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

¹⁸ The Anguilla Police Act, Chapter A70 of the Revised Statutes of Anguilla.

Section 30: Oaths to Be Taken by Members.

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

Section 31: Summoning of Persons to Council.

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

Section 32: Summoning of Council and Transaction of Business.

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

Section 33: Presiding in Council and Secretary.

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

Section 34: Attorney-General.

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

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



Beaches of Anguilla

CHAPTER 4: THE HOUSE OF ASSEMBLY

Section 35: House of Assembly.

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

¹⁹ The Elections Act, Chapter E30 of the Revised Statutes of Anguilla.

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

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

Section 36: Qualifications for Elected Membership.

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

Section 37: Disqualifications for Nominated or Elected Membership.

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

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

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

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

Section 38: Tenure of Office of Members of Assembly.

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

Section 39: Vacation of Seat on Sentence.

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

Section 40: Temporary Members of Assembly.

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

Section 40A: Leader of Opposition.

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

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

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

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

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

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

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

Section 43: Qualification of Voters.

101. This section provides for three categories of persons resident in an electoral district to be qualified. The first (1) is a person who is a British Dependent Territories Citizen, now styled a British Overseas Territories Citizen (BOTC), born in Anguilla and domiciled there at the qualifying date²⁰. The second (2) is a Belonger (presumably not a BOTC citizen born in Anguilla) who has resided in Anguilla for not less than 12 months and is the spouse, widow or widower, or the child or the spouse of a child of a person born in Anguilla. The third (3) is a Belonger (presumably who does not fall in one of the above two categories) who is domiciled in Anguilla and has resided there for at least 5 years immediately before the qualifying date. This multiplicity of qualifications is confusing and gives rise to opportunities for abuse.
102. **The Test of Citizenship.** British Overseas Territories Citizenship is granted by a non-Anguillian Act of the British Parliament. It is not limited to Anguillians. It applies to the BOTCs of other overseas territories. There is no reason why these other BOTCs should be entitled to vote in Anguilla. Only Anguillians should be qualified to vote in Anguillian elections. The Commission **recommends** that the section be amended to remove all mention of citizenship.
103. **The Belongership Test.** The qualification that one must be an Anguillian believer in order to be qualified to vote in Anguilla has found universal approval. Large numbers of transient workers and other temporary residents have moved to Anguilla in recent years, and in the view of the majority of Anguillians consulted by the Commission it is important to ensure that these temporary residents are not enfranchised with the result that island politics is affected. The Commission **recommends** Anguillian status, however acquired, be a qualification of all voters.
104. **The Test of Residence.** Section 43 presently provides that the second category of voter is a Belonger who is able to claim residence for a period of 12 months. By a large majority, Anguillians approve of the concept of a residence test, but would prefer it to be 3 years for all voters. A majority of Anguillians strongly believe that voters must be ordinarily resident in

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

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

²¹ The Elections Act, Cap E30 of the Revised Statutes of Anguilla.

Section 44: Disqualification of Voters.

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

Section 45: Right to Vote at Elections.

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

Section 46: Laws as to Elections.

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

²² The Elections Act, Chapter E30 of the Revised Statutes of Anguilla.

²³ The Elections Act, op. cit.

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



Anguilla's Tourism Industry

²⁴ The Elections Act, op. cit.

CHAPTER 5: POWERS AND PROCEDURE IN THE HOUSE OF ASSEMBLY

Section 47: Power to Make Laws.

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

Section 48: Royal Instructions.

115. This section provides for the Governor and the Assembly to conform to any Royal Instructions²⁵. During the review process no representations were received from the public and in our view the section does not require any amendment.

Section 49: Rules of Procedure.

116. This section authorises the Assembly to make its own rules of procedure²⁶ either subject to the Constitution or to any Royal Instructions. In representations made to the Commission, it was the general consensus, particularly among elected representatives, that the present Rules are out of date and in need of revision, but that activity is beyond the scope of this review. During the review process no representations were received from the public for alteration of this section and in our view the section does not require any amendment.

Section 50: Presiding in Assembly.

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

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

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

Section 51: Assembly May Transact Business Notwithstanding Vacancies.

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

Section 52: Quorum.

119. This section provides for a quorum to be present. A quorum is stated to be two-thirds. A number of issues have been raised in representations made to the Commission.
120. **Fractions of a Person.** The provision is ambiguous when the number of members present does not produce a whole number when divided by three. It has been suggested to the Commission that a person is a discrete object that cannot be divided into fractions. The question has been raised whether any resulting fraction ought to be either rounded up or down. It has been represented that a fraction of a person must include the whole person. The suggestion is that if the formula of a percentage is retained, an amendment be made specifying that any resulting fraction should be rounded up. In the event that the Commission's recommendation is accepted and the Assembly is enlarged to 13 elected and voting members, then the quorum provision would be two-thirds of 13, a figure which would produce a fraction. The Commission **recommends** as set out below that the formula of a percentage for calculating the quorum be abandoned in favour of a whole number.
121. **Size of the Quorum.** A quorum requirement is not designed to frustrate the holding of a meeting in the event that the requisite number of persons is not present, but is designed to ensure that members cannot complain if several of them choose to be absent from a discussion and a decision is arrived at with which they do not agree: the meeting will then be lawfully constituted once the quorum is present. Representations have been made to the Commission by a variety of persons concerning whether a quorum ought to remain set at so high a percentage as two-thirds. It has happened in the past that the Opposition boycotting the House has resulted in a lack of quorum and the inability of the House to do the people's business. The Commission has made a comparison of the Anguilla provision with several Commonwealth Caribbean quorum requirements, and finds that two-thirds is inordinately high²⁷. The norm is

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

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

Section 53: Voting.

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

Section 54: Summoning of Persons to Assist Assembly.

123. This section permits the Speaker to summon any person whose presence in his opinion is desirable to a meeting of the Assembly. That person is entitled to take part as if he was a member, but shall not be entitled to vote. The term "Assembly" is not defined in the Constitution to include committees of the Assembly. The Speaker does not necessarily preside at all meetings of committees of the Assembly. It was generally accepted that it would be advantageous for better use to be made by the Speaker, at the request of either the Government or the Opposition, of expert members of the public willing to donate their time and expertise to the work of the Assembly.
124. **Committees of the Assembly.** Representations have been made to the Commission that the power to summon appears to be limited to a plenary session of the Assembly and not to extend to committees. It has been urged that the power to summon persons to assist the Assembly should extend to committees of the Assembly, particularly to the Public Accounts Committee²⁸. The Assembly and its committees ought not to be constitutionally ham-strung in its ability to exercise oversight over the work of the Government. The Commission agrees that the power to summon persons to assist ought to extend to committees of the Assembly, and **recommends** that the section be amended to allow this.
125. **Who Should Summon.** It has been urged that the power to summon should extend to the Leader of the Opposition, or the leader of government business, and should not be limited to the Speaker. It has been urged that limiting the power to the Speaker, usually a nominee of the Government, unnecessarily restricts the power of the Assembly to supervise the activities of Government. Others have urged that the Speaker's control of the Assembly would be weakened if members of the Assembly or the chairmen of committees were permitted to summon

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

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

126. **Public Accounts Committee.** This Committee (the PAC) is traditionally in parliamentary democracies an important tool for public scrutiny of the manner in which Government spends public funds and is an essential adjunct to the functions of the Chief Auditor. The PAC is not mentioned in the Constitution²⁹ and the Commission is advised that it has never in the history of the Constitution of Anguilla met to perform its duties. During the review process the Commission received several recommendations that the Constitution be amended to ensure that this situation changes. One popular suggestion was that the Constitution should be amended to provide that the PAC shall meet with power to summon witnesses and to take evidence on oath and be required to publish its report. Another was that the Constitution be amended to provide that the Committee include non-parliamentarians appointed by the Governor to ensure political independence. A third was that the Leader of the Opposition should no longer be the designated chairperson, but that the Speaker or a member appointed by him should chair the PAC. The Commission **recommends** that the Constitution and the Rules of Procedure be amended to provide for a PAC, with (a) power to summon any person whose presence in the opinion of the chair is desirable to be examined on oath, and (b) with the Speaker or a member nominated by him as chairperson, and (c) with representation from both sides of the Assembly, and (d) with the power to co-opt members of the public to assist it in the performance of its functions, and (e) with a requirement that its report be published at least annually. It will be necessary for the Assembly to provide adequate funding and other resources for the PAC to carry out its functions.

Section 55: Introduction of Bills.

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

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

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

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

Section 56: Governor’s Legislative Reserved Powers.

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

³⁰ The Anguilla Act 1980 c.67 of the UK Parliament.

Section 57: Assent to Bills.

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

Section 58: Return of Bills by Governor.

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

Section 59: Disallowance of Bills.

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

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

Section 60: Oath of Allegiance.

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

Section 60A: Registration of Interests.

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

Section 61: Privileges of Assembly and Members.

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

Section 62: Sessions.

137. Sub-section (1) provides for the Governor to proclaim sessions of the Assembly. During the review process the Commission received no representation for reform, and is of the view that this provision is appropriate constitutionally.
138. **Minimum Number of Sessions.** Section 62(2) provides for a minimum of one session of the Assembly to be held in every year. In recent years the Assembly has sat on average three or four times a year, for a day or two at each sitting. The Commission has received several representations that at a salary of EC\$7,500.00 per month³¹ the members of the Assembly are over-paid for the little work that they do. It is the general feeling that

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

once the Assembly is enlarged to a size that permits committees³² to be formed, the work of the Assembly will necessarily increase and the frequency of sittings will rise. Representations have been made to the Commission that the Assembly should be constitutionally required to sit regularly, say once or twice per month. However, the Commission is not sure how such a provision would work in the event that neither the Government nor the Opposition has any work to be laid before the Assembly on a monthly or bi-weekly basis. Based on present experience, if it is thought desirable to provide for more regular meetings, that provision might better be found in the revised Rules of Procedure of the Assembly which can be altered from time to time as necessary. The Commission does not recommend any change in this constitutional provision.

Section 63: Prorogation and Dissolution.

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

Section 64: General Elections.

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

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

CHAPTER 6: THE PUBLIC SERVICE

Section 65: Public Service Commission.

141. This section provides for the Governor to appoint a Public Service Commission (PSC) consisting of 3 members appointed by him in his discretion and 2 after consultation with the public service staff associations³³. The Governor after consulting the Premier appoints one of the members to be the Chairman³⁴. Members serve for a period of 2 years³⁵. The PSC has only advisory powers, and the Governor appoints, removes and exercises disciplinary control entirely in his discretion³⁶.
142. **Political Neutrality.** In representations made to the Commission there was general consensus that the public service should continue to be kept away from political control or influence. Questions have arisen and representations have been made only in relation to the appropriateness of continuing to have all matters concerning the public service under the sole control of the Governor, a Foreign and Commonwealth Office appointee, and out of the influence or control of any indigenous Anguillian institution. Such a provision does not allow island institutions for governance to grow in experience and maturity. Institutionalising the head of the public service in the office of a local Deputy Governor will go a long way to resolving this embarrassment. Another appropriate and timely change would be to strengthen the PSC and to increase its powers in relation to the public service. This will permit democratic and civil institutions in the island to grow and develop, while maintaining the independence of the service. Britain's overall responsibility for the protection of the service from political interference will be adequately met by continuing to have the Deputy Governor in control of it.
143. **Appointment to the PSC.** There has been a suggestion that it is time for the Premier and the Leader of the Opposition to have a say in the appointment of persons to the PSC. On the other hand, a majority of persons making representations to the Commission have emphasized to the Commission that politicians should be kept away from the public service. The Commission considers that this can be achieved by the Constitution providing that the majority of the membership of the PSC should continue to be filled by the Deputy Governor acting in his discretion and not after consultation or on the advice of either of the Chief Minister or the Leader of the Opposition, and the Commission so **recommends**. The other two positions should continue to be filled after consultation with public service staff associations.

³³ Sub-section (1).

³⁴ Sub-section (2).

³⁵ Sub-section (4).

³⁶ Section 66(1).

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

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

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

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

Section 67: Judicial Service Commission.

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

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

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

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

³⁸ West Indies Associated States Supreme Court Order 1967, No 223 of 1967.

³⁹ No 223 of 1967 op. cit.

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

Section 69: Applicability of Pensions Law.

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

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

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

Section 71: Grant and Withholding of Pensions, Etc.

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

CHAPTER 7: MISCELLANEOUS

Section 72: Appeals to Her Majesty in Council.

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

Section 73: Interpretation.

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

Section 74: Public Seal.

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

Section 75: Grants of Land.

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

Section 76: Governor’s Power of Pardon.

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

Section 77: Offices and Appointments.

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

Section 78: Discipline.

165. This section confers on the Governor the widest power for cause shown to his satisfaction to dismiss any person holding a public office including requiring him to retire. In accordance with the recommendations made earlier, the Commission is of the view that this section is arbitrary and inappropriate at this time in Anguilla’s constitutional history. Matters of discipline belong in the hands of a Public Service Commission with full executive powers and with a right of appeal. The Commission **recommends** that this section be amended to provide that matters of discipline are the province of the PSC. The Act⁴⁰ will need to be amended to make full provision for the Commission to carry out this function. The Deputy Governor will then act on the advice of the PSC.

Section 79: Chief Auditor.

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

Section 80: Belonger Status.

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

⁴⁰ The Public Service Commission Act, Chapter P165 of the Revised Statutes of Anguilla.

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

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

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

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

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

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

- (6) **A person who is born in Anguilla (and who is not regarded as an Anguillian as provided for above) and who has lived in Anguilla for the first 12 years of his/her life and whose absences from Anguilla during each of those years do not exceed 90 days save for good and sufficient cause. Such a person must apply to the ASC for a grant of Anguillian status.** Many persons voiced the opinion that all persons born in Anguilla should be Anguillians. However, being mindful of the myriad problems that could face a small nation with a growing immigrant population if birth alone in Anguilla entitled a person to Anguillian status, it is the view of the populace that if a person born in Anguilla is not an Anguillian, that person should satisfy a period of residence (shorter than that of persons who have emigrated to Anguilla) and apply to the ASC for a grant of Anguillian status.
175. **Loss of Anguillian Status.** The view has also been expressed by some Anguillians that where persons are granted Anguillian status by the ASC, provision must be made for such persons to lose their status if they are convicted of an indictable offence, and the Commission so **recommends**.
176. **Consequential Amendments to the Constitution.** As a result of the above proposals the Commission **recommends** that amendment will also have to be made to other provisions of the Constitution so as to remove the references to “BDTC” and replace same with the term “Anguillian”. By way of example the current section 43 which deals with qualification of voters would have to be amended.
177. **Consequential Amendments to Legislation.** The Commission also **recommends** that all legislation which uses the term “Belonger” as opposed to “Anguillian” would also have to be amended.
178. **Identity Cards.** Once the new Anguillian status provisions come into force, there will be persons who become naturalised in Anguilla and who may hold British passports issued in Anguilla, but who will not automatically be Anguillians. It will become increasingly important to take steps to recognise who is and who is not an Anguillian. The Commission

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

179. **National Security Council:** The Governor has recently announced the appointment of a National Security Council (NSC) with advisory powers. The Commission **recommends** that the NSC be established under the Constitution and be given executive responsibility, not merely advisory functions. It should be made responsible for all matters of policy and oversight relating to internal security, including the police force.
180. **Police Service Commission.** The Commission has earlier⁴¹ recommended that a Police Service Commission be established under the Constitution. It should be responsible for hiring, promotions and disciplinary issues within the police force. The Commissioner of Police should act on the advice of the Police Service Commission in hiring non-Gazetted police officers. The Governor should act on its advice in hiring Gazetted police officers. There may need to be consequential amendments to the **Police Act**⁴².
181. **Complaints Commissioner.** Anguilla has no Complaints Commissioner or Ombudsman. The only remedy for administrative abuse at present is an action for damages in the High Court. High Court proceedings are not only expensive but are often not the best remedy for improper conduct on the part of a public servant or government department. Representations have been made to the Commission that it is time that such relief be provided to citizens who have a complaint of oppressive or unfair treatment by any government officer. The Commission is satisfied that it is appropriate for Anguilla to have an Ombudsman at this time. The Commission **recommends** that there be provision in the Constitution for the office of Ombudsman, to report to the Assembly and to be regulated by an appropriate law.
182. **Human Rights Commission.** Several persons have made representations to the effect that the average Anguillian can never afford to go to the High Court to secure his fundamental rights. The cost of an application in the High Court is simply exorbitant. It has been pointed out that many Commonwealth countries have a Commission established by Parliament with the duty and responsibility to take valid complaints of infringement of a person's fundamental rights before the High Court for relief. The Commission **recommends** the placing in the Constitution of provision for a Human Rights Commission to be funded by the House of Assembly and to be governed by an Act.

⁴¹ At paragraph 63.

⁴² The Anguilla Police Act, Chapter A70 of the Revised Statutes of Anguilla.

