

ANGUILLA CONSTITUTIONAL REVIEW

The United Kingdom Government will require the inclusion of a section along the following lines in any new Constitution of Anguilla. This is a vital provision for the good governance of Anguilla, dealing as it does with the way the Governor must exercise his or her functions. It is not understood why a provision on these lines was omitted from the draft Constitution of Anguilla set out in the Report of the Anguilla Constitutional and Electoral Reform Committee of 31 March 2017. The United Kingdom Government must insist on its inclusion.

Exercise of Governor's functions

42A.-(1) Subject to subsections (2) and (4), the Governor shall consult with the Cabinet in the exercise of all functions conferred on him or her by this Constitution or by any other law for the time being in force in Anguilla and act in accordance with the advice of the Cabinet.

(2) The Governor shall not be obliged to consult with nor act in accordance with the advice of the Cabinet with respect to the following –

- (a) in any case which, in his or her opinion, involves a matter for which he or she is responsible under section 42(1);
- (b) any function conferred on him or her by this Constitution or any other law that he or she is empowered to exercise in his or her discretion or judgement;
- (c) when acting under instructions given to him or her by or on behalf of Her Majesty;
- (d) any function conferred by this Constitution or any other law that he or she is empowered or directed, either expressly or by necessary implication, by that or any other law to exercise without consulting the Cabinet;
- (e) any matter in which, in his or her judgement, the service of Her Majesty would sustain material prejudice thereby;
- (f) where the matter to be decided is in his or her judgement too unimportant to require the advice of the Cabinet; or
- (g) where the urgency of the matter requires him or her to act before the Cabinet can be consulted.

(3) In any case falling within subsection (2)(a) the Governor shall keep the Cabinet informed of any matters that in his or her judgement may involve the economic or financial interests of Anguilla, and in any case falling within subsection (2)(g) the Governor shall as soon as practicable inform the Cabinet of the measures that he or she has adopted and the reasons for them.

(4) In any case in which the Governor consults with the Cabinet, the Governor may, with the prior approval of a Secretary of State, act otherwise than in accordance with the advice given to him or her by the Cabinet if, in his or her judgement –

- (a) it would be right to do so in the interests of good governance; or

(b) such advice would affect any of the matters referred to in section 42(1).

(5) Whenever the Governor acts otherwise than in accordance with the advice given to him or her by the Cabinet, any member of the Cabinet may require that there be recorded in the minutes of the Cabinet the grounds of any advice or opinion that he or she may have given on the question, and the Governor shall forthwith forward a copy of the resulting entry in the minutes to a Secretary of State.

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

(7) Where the Governor is directed by this Constitution or any other law to exercise any function after consultation with any person or authority other than the Cabinet, he or she shall not be obliged to exercise that function in accordance with the advice of that person or authority.