
STATUTORY INSTRUMENTS

2020 No. XXXX

CARIBBEAN AND NORTH ATLANTIC TERRITORIES

The Anguilla Constitution Order 2020

Made - - - - *****

Coming into force in accordance with Section 1-(2)

CONTENTS

1. Citation, commencement and establishment of the Constitution _____ 7
CHAPTER

CONSTITUTION OF ANGUILLA

PREAMBLE

PART 1

PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS

2. Fundamental rights and freedoms of the individual _____ 8
3. Protection of right to life _____ 9
4. Protection of right to personal liberty _____ 9
5. Protection of right of prisoners to humane treatment _____ 11
6. Protection from slavery and forced or compulsory labour _____ 11
7. Protection of freedom of movement _____ 11
8. Protection from ~~inhuman~~torture and inhuman or degrading treatment _____ 13
9. Protection from deprivation of property _____ 13
10. Protection ~~from arbitrary search or entry~~of private and family life and privacy of home and other property _____ 14
11. ~~Provision~~Provisions to secure protection of law _____ 15
12. Protection of freedom of thought, conscience and religion _____ 16
13. Protection of right to education _____ 17
14. Protection of freedom of expression _____ 18
~~14.~~15. Protection of freedom of assembly and association _____ 18
~~14A.~~16. Protection of right to marry _____ 19
~~15.~~17. Protection from discrimination ~~on the grounds of race, etc.~~ _____ 19

16. <u>18.</u>	Protection of the environment	21
19.	<u>Protection of children</u>	21 <u>17. Children</u>
18.	<u>Derogation</u>	
20.	<u>Derogations</u> from fundamental rights and freedoms under emergency powers	21
19. <u>21.</u>	Protection of persons detained under emergency laws	21
20. <u>22.</u>	Enforcement of protective provisions	22
23.	<u>Emergency powers</u>	23 <u>21. Declaration of emergency</u>

CHAPTER

**PART 2
INTERPRETATION**

22.		
24.	Interpretation	24
23. <u>25.</u>	References to public office	26
24.		
26.		Appointments
25. <u>27.</u>	Re-election or re-appointment	27
26. <u>28.</u>	Removal from office	27
27.		
29.		Resignation
28. <u>30.</u>	Power to amend or revoke instruments	27

CHAPTER

**PART 3
THE GOVERNOR**

29.		
31.	The Governor	28
30. <u>32.</u>	Office of Governor	28
31. <u>33.</u>	Acting Governor	29
32. <u>34.</u>	Functions of Deputy Governor	29
33. <u>35.</u>	Deputy/deputy Governor's	30

CHAPTER

**PART 4
THE EXECUTIVE**

34.		
36.	Executive authority of Anguilla	30
35. <u>37.</u>	Cabinet and <u>government</u> Government of Anguilla	31
36. <u>38.</u>	Appointment of <u>ministers</u> Ministers	31

37. 39. Tenure	of	office	of	
ministers <u>Ministers</u>				32
38. 40. Performance	of	functions	of	Premier in certain
events				32
39. 41. Assignment	of	responsibilities	and	ministers <u>to</u>
Ministers				33
40. 42.				Attorney-
General				33
41. 43. Director		of		Public
Prosecutions				34
42. 44. Governor's				special
responsibilities				34
45. <u>Exercise of Governor's functions</u>				36
46. 41. Oaths to be taken by members of Cabinet				37
44. 47. Summoning	of		persons	to
Cabinet				37
45. 48. Summoning	of	Cabinet	and	transaction of
business				37
46. 49. Presiding				in
Cabinet				37
47. 50.				Cabinet
Secretary				38
48. 51.				Public
Seal <u>seal</u>				38
52. <u>Power to constitute offices</u>				38

CHAPTER

PART 5

THE PUBLIC SERVICE

53. 49. Public service general: Power to appoint, etc., to public				office
offices				38
50. 54. Pensions:	Applicability		of	pensions
law				40
51. 55. Pensions, etc., charged on revenues of				40
Anguilla				
52. 56. Grant and withholding of				pensions <u>pension</u> ,
etc.				41

CHAPTER

PART 6

HOUSE OF ASSEMBLY THE LEGISLATURE

57.				
53. Composition of legislature and power to make laws				41
54. 58. Qualifications		for		elected
membership				41
55. 59. Disqualifications		for		elected
membership				42
56. 60. Declaration by candidates for election to				42
Assembly				
57. 61. Tenure of office of members of				43
Assembly				

58.	62.	Vacation	of	seat	on	sentence	<u>and</u>	43
		<u>suspension</u>						
59.	63.	Temporary			members		of	44
		Assembly						
60.	64.	Leader			of		the	44
		Opposition						
61.	65.	Power	to		provide		for	a
		referendum						45
62.	66.						People-initiated	45
		referendums						
63.	67.	Determination	of	questions	as	to	membership	of
		Assembly						45
64.	68.	Penalty	for	sitting	or	voting	in	Assembly
		unqualified						when
								46
65.	69.	Qualification						of
		voters						46
65A.	70.	Right		to		vote		at
		elections						47
66.	71.	Laws			as			to
		elections						48
67.	72.						Elected	48
		members						

CHAPTER

PART 7

POWERS AND PROCEDURE IN THE HOUSE OF ASSEMBLY

68.								
73.		Standing Orders and	<u>Committees</u>	<u>committees</u>				49
69.	74.	Presiding					in	50
		Assembly						
70.	75.	Assembly	may	transact	business		notwithstanding	50
		vacancies						
71.								
		76.					Quorum	51
72.								
		77.					Voting	51
73.	78.	Summoning	of	persons		to	assist	51
		Assembly						
74.	79.	Introduction					of	51
		<u>Bills</u>						
80.		[Governor's legislative reserved power]						51
81.		Assent to						52
		<u>Bills</u>						
76.	82.	Return	of		<u>Bills</u>		by	52
		Governor						
83.		[Disallowance of laws]						53
83.		[Pre-legislative controls]						53
84.		Standing Committees						53
78.	85.	Oath					of	54
		<u>Allegiance</u>						
79.	86.	Privileges	of		Assembly		and	54
		members						

80.									
	87.							Sessions	
									54
81.	88.	Prorogation						and	
		dissolution							54
82.	89.							General	
		elections							55

CHAPTER

PART 8
THE JUDICATURE

83.									
90.		Eastern Caribbean Supreme Court							55
84.	91.	Subordinate						courts	and
		tribunals							55
85.	92.	Appeals	to		Her		Majesty	in	
		Council							56

CHAPTER

PART 9
INSTITUTIONS PROTECTING GOOD GOVERNANCE

86.									
93.		Electoral Distriets District			Boundary Commission				56
87.	94.	Review	and		alteration		of	electoral	district
		boundaries							57
88.	95.	Public							Service
		Commission							58
89.	96.	Teaching							Service
		Commission							58
90.	97.	Police							Service
		Commission							58
91.	98.	Power to appoint, etc., to		office offices		in the	police —service	Police	
				Service					59
92.	99.	National							Security
		Commission							59
93.	100.	Financial							Services
		Commission							60
94.	101.								Appointments
		Commission							61
95.	102.	Judicial			and		Legal		Service Services
		Commission							61
96.	103.	Power	to		appoint,		etc.,	to	legal
		offices							61
97.	104.								Integrity
		Commission							62
98.	105.	Registration							of
		interests Interests							63
99.	106.	Anguillian							Status
		Commission							63
107.	100.	Advisory Commission on the Prerogative of Mercy							64
108.	101.	Commissions of Inquiry							65
109.	102.	General provisions regarding Commissions							65
110.	103.	Legislation regarding Commissions							67
111.	104.	Human Rights Commissioner							67

112.	105. Complaints Commissioner	68
113.	106. Police Complaints Commissioner	68
114.	107. Public Procurement Commissioner	68
115.	108. Freedom of Information Commissioner	69
116.	109. Supervisor of Elections]	69
117.	110. General provisions relating to Commissioners	69
118.	Public assets	70

PART ~~111.~~ Crown land

CHAPTER 10 **[PUBLIC FINANCE](a)**

119.	General principles	71
120.	Taxation	72
121.	Contingent liabilities	72
122.	Consolidated Fund	72
123.	Withdrawal from Consolidated Fund or other public funds	72
124.	Financial year estimates	73
125.	Appropriation Bill	73
126.	Excess expenditure	73
127.	Contingencies	74
128.	Power of Government to borrow or lend	74
129.	Exercise of functions in Part 10 by Governor	75
130.	Appropriations Committee	75
131.	Provision for and funding of institutions protecting good governance	75
132.	Public Accounts Committee	76
133.	Accounting officers	77
134.	Public debt	77
135.	Financial control and accounts	77
136.	Audit	77
137.	Remuneration of Speaker and other members of Assembly	78
138.	Remuneration of certain officers	78

PART 11 TRANSITIONAL AND MISCELLANEOUS

139.	Meaning of the appointed day	78
140.	Revocations	79
141.	Existing laws	79
142.	Existing offices and officers	79
143.	Director of Public Prosecutions	79
144.	House of Assembly	79
145.	Power reserved to Her Majesty	80

(a) This section is still under consideration by Anguilla, but this draft includes a reformulated proposal by the UK.

At the Court at Buckingham Palace, the ~~---~~ day of ~~---~~ 2017^a

Present,

The Queen’s Most Excellent Majesty in Council

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

Citation, commencement and establishment of the Constitution

1. ~~(1)~~ 1. ~~(1)~~ This Order may be cited as the Anguilla Constitution Order 2017~~2020~~.

(2) ~~(2)~~ This Order shall come into force [on such day as the day on which Governor, acting in his or her discretion, may appoint by Proclamation published in the Assembly of Anguilla is dissolved next following the day on which this Order is made, Gazette], (d) which day is in this Order referred to as “the appointed day”.

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

~~(a) the office of Premier shall continue to be called Premier;~~

(a) ~~(b)~~ the Cabinet shall continue to be called the Executive Council; and

(b) ~~(c)~~ no person shall be appointed to the office of Cabinet Secretary.

CONSTITUTION OF ANGUILLA

PREAMBLE^e

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

Acknowledge~~Acknowledging~~ that the society of Anguilla is based upon certain moral, spiritual and democratic values, including a belief in God, the inherent dignity of the human person, the

~~a~~ — The commencement follows the format of the style of the Virgin Islands Constitution Order 2007 (hereinafter the “VI Constitution”).

~~(b)~~ 1980 c.67.

~~(c)~~ The reference to the West Indies Act 1967 in the previous draft has been removed, as this does not provide the legal authority to make the Order in Council containing the Constitution. That is to be found in the Anguilla Act 1980 and powers otherwise in Her Majesty vested.

~~(d)~~ Although this was not discussed during the first round of negotiations, the UK proposes that the Order comes into force in this manner or on a specific day. This is because the key changes to the composition of the House of Assembly and the introduction of the island-wide district have already taken place, so there is not necessarily a need to wait until the next dissolution of the Assembly, as was proposed in the previous draft.

~~e~~ — As recommended by paragraph 4 of the 2006 Report of the Constitutional and Electoral Reform Commission (hereinafter “the 2006 Report”). The wording is taken from Rev Dr Clifton Niles’ Committee’s 2012 draft Constitution for Anguilla (hereinafter “Rev Niles’ draft”).

inalienable right of the freedom of the individual, and respect for fundamental rights and freedoms and the rule of law;

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

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

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

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

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

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

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

PART 1 CHAPTER 1a

PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS

Fundamental rights and freedoms of the individual

~~2.2-~~ Whereas every person in Anguilla is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, ~~whatever his race, place of origin, political opinions, colour, creed or sex without distinction of any kind, such as sex, race, colour, language, religion, disability, political or other opinion, national or social origin, association with a national minority, property, birth, [sexual orientation, or other status]~~(b), but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely~~:-~~

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

the subsequent provisions of this ~~Chapter~~Part shall have effect for the purpose of affording protection to the aforesaid rights and freedoms, and to related rights and freedoms, subject to such limitations of that protection as are contained in those provisions, being limitations designed to

a—As suggested by Lolita Richardson's 2009 draft Constitution for Anguilla (hereinafter "Mrs Richardson's draft"), the Fundamental Rights are shifted to Chapter 1.

(b) These words remain under consideration by Anguilla. This provision needs to correspond with the language of section 17.

e—Amended to follow section 1 of Mrs Richardson's draft.

ensure that the enjoyment of the said rights and freedoms by an individual does not prejudice the rights and freedoms of others or the public interest-

Protection of right to life

3.—(1)~~3. (1)~~ Every person has the right to life which shall be protected by law.^a

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

(3) ~~(3)~~ A person shall not be regarded as having been deprived of his or her life in contravention of this section if he or she dies as the result of the use, to such extent and in such circumstances as are permitted by law, of ~~such~~ force as which is reasonably justifiable, no more than absolutely necessary—

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

Protection of right to personal liberty

4.—(1)~~4. (1)~~ Every person has the right to liberty and security of the person which shall be protected by law.^b

(2) ~~(2)~~ No person shall be deprived of his personal~~or her~~ liberty save as may be authorised and in accordance with a procedure prescribed by law in any of the following cases, ~~that is to say, —~~

- (a) ~~(a)~~ in consequence of his or her unfitness to plead to a criminal charge;
- (b) ~~(b)~~ in execution of the sentence or order of a court, whether established for Anguilla or some other country, in respect of a criminal offence of which he or she has been convicted;
- (c) ~~(c)~~ in execution of an order of the High Court or the Court of Appeal or such other a court as may be prescribed by the Assembly on the grounds of his or her contempt of ~~any such that~~ court or of another court or tribunal;
- (d) ~~(d)~~ in execution of the order of a court made in order to secure the fulfilment of any obligation imposed on him or her by law;
- (e) ~~(e)~~ for the purpose of bringing him or her before a court in execution of the order of a court;
- (f) ~~(f)~~ upon reasonable suspicion of his or her having committed or of being about to commit a criminal offence under the law of Anguilla;
- (g) ~~(g)~~ under the order of a court or with the consent of his or her parent or legal guardian, for his or her education or welfare during any period ending not later than the date when he or she attains the age of eighteen~~18~~ years;
- (h) ~~(h)~~ for the purpose of preventing the spread of an infectious or contagious disease;
- (i) ~~(i)~~ in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his or her care or treatment or the protection of the community;
- (j) ~~(j)~~ for the purpose of preventing the unlawful entry of that person into Anguilla, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Anguilla, or for the purpose of restricting that person while he or she is being conveyed through Anguilla in the course of his or her extradition or removal as a convicted prisoner from one country to another; or
- (k) ~~(k)~~ [to such extent as may be necessary in the execution of a lawful order requiring that person to remain within a specified area within Anguilla or prohibiting him or her from being within

^a—Amendment suggested by section 2 of Mrs Richardson's draft.

^b—Amendment suggested by section 3 of Mrs Richardson's draft.

such an area or to such extent as may be reasonably justifiable for the taking of proceedings against that person relating to the making of any such order, or to such extent as may be reasonably justifiable for restraining that person during any visit that he or she is permitted to make to any part of Anguilla in which, in consequence of any other such order, his or her presence would otherwise be unlawful. ~~(a)~~

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

(4) ~~(4)~~ Any person who is arrested or detained shall have the right, at any stage and at his or her own expense, to retain and instruct without delay a legal representative of his or her own choice or, when the interests of justice so require, a legal representative at the public expense, and to hold private communication with such legal ~~practitioner~~representative and, in the case of a minor, to ~~communicate~~communicate with his or her parent or guardian. ~~e~~

(5) ~~(5)~~ Every person who is arrested or detained shall be informed, ~~as soon as reasonably practicable promptly~~ and in a language that he or she understands, of his or her rights under subsection (4) ~~(5)~~; and that person shall also have the right, and shall be informed at the same time that he or she has the right, to remain silent and to have one person informed ~~by the quickest practicable means promptly~~ of his or her arrest and his or her whereabouts. ~~d~~

(6) ~~(6)~~ Any person who is arrested or detained; ~~—~~

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

and who is not released, shall be brought within ~~forty eight~~48 hours before a court; and if any person arrested or detained upon reasonable suspicion of his or her having committed or being about to commit a criminal offence under the law of Anguilla is not tried within a reasonable time, then, without prejudice to any further proceedings which may be brought against him or her, he or she shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he or she appears at a later date for trial or for proceedings preliminary to trial.

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

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

(9) ~~(9)~~ For the purposes of subsection (2)(b) ~~(2)(b) of this section~~ a person charged before a court with a criminal offence in respect of whom a special verdict has been returned that he or she was guilty of the act or omission charged but was [insane] ~~(g)~~ when he or she did the act or made the

(a) UK proposed deletion of this paragraph. Under consideration by Anguilla.

~~b~~ As recommended by paragraph 12 of the 2006 Report.

~~c~~ Suggested by section 3 of Mrs Richardson's draft.

~~d~~ Suggested by section 3 of Mrs Richardson's draft.

~~e~~ As recommended by paragraph 13 of the 2006 Report.

~~f~~ Wording suggested by section 3 of Mrs Richardson's draft.

(g) The question whether the word "insane" is correct and whether more up to date terminology can be used is under consideration by Anguilla.

omission shall be regarded as a person who has been convicted of an offence and the detention of a person in consequence of such a verdict shall be regarded as detention in execution of the order of a court.

~~Protection of right of prisoners to humane treatment~~^a

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

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

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

Protection from slavery and forced or compulsory labour

6. ~~(1)~~^{6. (1)} No person shall be held in slavery or servitude.

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

(3) ~~(3)~~ For the purposes of this section, the expression “forced or compulsory labour” does not include:—

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

Protection of freedom of movement

7. ~~(1)~~^{7. (1)} No person shall be deprived of his or her freedom of movement, and, for the purposes of this section the said freedom means the right to move freely throughout Anguilla, the right to reside in any part of Anguilla, the right to enter Anguilla, the right to leave Anguilla and immunity from expulsion from Anguilla.

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

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

~~(a) for the imposition of restrictions on the movement or residence within Anguilla of any person or on any person’s right to leave Anguilla that are reasonably required in the interests of defence, public safety or public order;~~

^a—New provision suggested by section 4 of Mrs Richardson’s draft.

- (a) ~~(b)~~ for the imposition of restrictions on the movement or residence within Anguilla or on the right to leave Anguilla of persons generally or any class of persons in the interests of defence, public safety, public order, public morality or public health and except so far as that provision or, as the case may be, the thing done under ~~theits~~ authority ~~thereof~~ is shown not to be ~~reasonably justifiable~~~~[necessary]~~~~(a)~~ in a democratic society;
- (b) ~~(c)~~ for the imposition of restrictions on the movement or residence within Anguilla of any person who is not Anguillian or the exclusion or expulsion from Anguilla of any such person; ~~but –~~
 - (i) ~~(d) for the imposition~~ no restriction may be imposed by virtue only of ~~restrictions~~ ~~this paragraph~~ on the ~~acquisition or use by right of~~ any ~~such~~ person ~~of land or other property, so long as he or she is lawfully present~~ in Anguilla, ~~to move freely throughout Anguilla and to reside anywhere in Anguilla;~~
 - (ii) no restriction may be imposed by virtue only of this paragraph on the right of any such person to leave Anguilla; and
 - (iii) no such person shall be liable, by virtue only of this paragraph, to be expelled from Anguilla unless the requirements specified in subsection (4)~~(c)~~ are satisfied.~~(b)~~
- (c) for the imposition of restrictions on the movement or residence within Anguilla of public officers, or on the right of public officers to leave Anguilla, ~~that are reasonably required for the proper performance of their functions;~~(c)
- (d) ~~(f)~~ for the removal of a person from Anguilla to be tried or punished in some other country for a criminal offence under the law of that other country or to undergo imprisonment in ~~that~~~~some~~ other country in execution of the sentence of a court in respect of a criminal offence under the law of Anguilla of which he or she has been convicted; or
- (e) ~~(g)~~ for the imposition of restrictions on the right of any person to leave Anguilla that are reasonably required in order to secure the fulfilment of any obligations imposed on that person by law and except so far as that provision or, as the case may be, the thing done under ~~theits~~ authority ~~thereof~~ is shown not to be ~~reasonably justifiable~~~~[necessary]~~~~(d)~~ in a democratic society.

(4) [The requirements to be satisfied for the purposes of subsection (3)(b)(iii) (that is to say, before a person who is not an Anguillian may be expelled from Anguilla) are as follows—

- (a) the decision to expel that person is taken by an authority, in a manner and on grounds prescribed by law;
- (b) that person has the right, save where the interests of defence, public safety or public order otherwise require, to submit reasons against his or her expulsion to a competent authority prescribed by law;
- (c) that person has the right, save as aforesaid, to have his or her case reviewed by a competent authority prescribed by law; and
- (d) that person has the right, save as aforesaid, to be represented for the purposes of paragraphs (b) and (c)~~(4)~~ before the competent authority or some other person or authority designated by the competent authority.~~(e)~~

~~(4)~~(5) [If any person whose freedom of movement has been restricted by virtue only of such a provision as is referred to in subsection (3)(a)~~(3)(a) of this section~~ so requests at any time during the period of that restriction not earlier than six months after the restriction was imposed or six months after he or she last made such a request during that period, his or her case shall be reviewed by ~~an independent and impartial tribunal established by law and presided over by a person appointed by the~~

(a) UK proposed this change. Under consideration by Anguilla.
 (b) Under further consideration by Anguilla.
 (c) UK proposed this change. Under consideration by Anguilla.
 (d) UK proposal. Under consideration by Anguilla.
 (e) UK proposal. Under consideration by Anguilla.

~~Chief Justice from among persons who hold the office of magistrate in Anguilla or who are entitled to practise or to be admitted to practise in Anguilla as barristers court.~~

~~(5)(6)(5)~~ On any review by a ~~tribunal court~~ in pursuance of subsection (5)(4) of this section of the case of any person whose freedom of movement has been restricted, the ~~tribunal court~~ may make recommendations concerning the necessity or expediency of continuing that restriction to the authority by whom it was ordered and, unless it is otherwise provided by law, that authority shall be obliged to act in accordance with any such recommendations. ~~](a)~~

Protection from ~~inhuman~~ torture and inhuman or degrading treatment

~~8.8.~~ No person shall be subjected to torture or to inhuman or degrading punishment or other treatment.

Protection from deprivation of property

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

- (a) ~~(a)~~ prescribes the principles on which and the manner in which adequate compensation ~~thereto~~ is to be determined;
 - (b) ~~(b)~~ requires the prompt payment in money of ~~such~~ adequate compensation; ~~b~~
 - (c) ~~(c)~~ prescribes the manner in which the compensation is to be given; and
 - (d) ~~(d)~~ prescribes the manner of enforcing the right to any such compensation.
- (2) ~~(2)~~ Nothing in this section shall be construed as affecting the making or operation of any law so far as that law provides for the taking of possession or acquisition of any property, interest or right, ~~—~~
- (a) ~~(a)~~ in satisfaction of any tax, rate or due; ~~or~~
 - (b) ~~(b)~~ by way of penalty for breach of the law, whether under civil process or after conviction of a criminal offence under the law of Anguilla; ~~or~~
 - (c) ~~(c)~~ upon the attempted removal of the property in question out of or into Anguilla in contravention of any law; ~~or~~
 - (d) ~~(d)~~ by way of the taking of a sample for the purpose of any law; ~~or~~
 - (e) ~~(e)~~ where the property consists of an animal upon its being found trespassing or straying; ~~or~~
 - (f) ~~(f)~~ as an incident of a lease, tenancy, licence, mortgage, charge, bill of sale, pledge or contract; ~~or~~
 - (g) ~~(g)~~ by way of the vesting or administration of trust property, enemy property, or the property of persons adjudged or otherwise declared bankrupt or insolvent, persons of unsound mind, deceased persons, or bodies corporate or ~~unincorporate~~ unincorporated in the course of being wound up; ~~or~~
 - (h) ~~(h)~~ in the execution of judgments or orders of courts; ~~or~~
 - (i) ~~(i)~~ by reason of its being in a dangerous state or injurious to the health of human beings, animals or plants; ~~or~~
 - (j) ~~(j)~~ in consequence of any law with respect to the limitation of actions; or
 - (k) ~~(k)~~ for so long only as may be necessary for the purposes of any examination, investigation, trial or inquiry or, in the case of land, the carrying out thereon, ~~—~~
 - (i) ~~(i)~~ of work of soil conservation or of conservation of other natural resources; or

(a) UK proposed deletion of subsections (5) and (6). Under consideration by Anguilla.

~~b~~ — As recommended by paragraph 17 of the 2006 Report.

(ii) ~~(ii)~~ of work relating to agricultural development or improvement which the owner or occupier of the land has been required, and has without reasonable excuse refused or failed, to carry out.

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

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

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

Protection from arbitrary search or entry of private and family life and privacy of home and other property

10. ~~(1)~~ ~~10. (1)~~ Every person has the right to respect for his [or her](#) private and family life, ~~his~~ home and ~~his~~ correspondence and, except with his [or her](#) own consent, no person shall be subjected to the search of his [or her](#) person or ~~his~~ property or the entry by others on his [or her](#) premises.^a

(2) ~~(2)~~ Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision, [that is necessary in a democratic society—](#)

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

^a— Wording suggested by section 9 of Mrs Richardson’s draft.

Provisions to secure protection of law

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

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

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

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

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

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

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

- (6) ~~(6)~~ Every person who is charged with a criminal offence; ~~—~~
- (a) ~~(a)~~ shall be informed orally and in writing ~~as soon as reasonably practicable~~ promptly, in a language ~~which that~~ he or she understands and in detail, of the nature of the offence charged;
 - (b) ~~(b)~~ shall be given adequate time and facilities for the preparation of his or her defence;
 - (c) ~~(c)~~ shall be permitted to defend himself or herself in person or, at his or her own expense, by a legal representative of his or her own choice; ~~or, when the interests of justice so require, by a legal representative at his own~~ the public expense;
 - (d) ~~(d)~~ shall be afforded facilities to examine in person or by his or her legal representative the witnesses called by the prosecution before any court and to obtain the attendance of witnesses, subject to the payment of their reasonable expenses, and carry out the examination of such witnesses to testify on his or her behalf before the court on the same ~~condition~~ conditions as those applying to witnesses called by the prosecution;
 - (e) ~~(e)~~ shall be permitted to have without payment the assistance of an interpreter if he or she cannot understand or speak the English language; and
 - (f) ~~(f)~~ [shall, when charged on information or indictment in the High Court, have the right to trial by jury or before a judge sitting alone, as he or she may choose;.] ~~(b)~~

^a This wording removes the previous provision for automatic exclusion of Chamber proceedings, as recommended by paragraph 19 of the 2006 Report.

^b Amendment suggested by section 10 of Mrs Richardson's draft. (b) Paragraph (f) is opposed by the UK. Under consideration by Anguilla

~~(f) (7)~~ [shall, when tried before the High Court, have the right to trial by jury except as otherwise provided for by Act of the Legislature.]~~(a)~~

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

- (a) ~~(a)~~ that person so behaves in the court as to render the continuance of the proceedings in his or her presence impracticable and the court has ordered that person to be removed and the trial to proceed in his or her absence; or
- (b) ~~(b)~~ the court, being satisfied that no injustice will result, orders the trial to proceed in that person's absence on account of the abscondment or the involuntary illness or incapacity of that person.~~b~~

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

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

(10) ~~Provided that nothing~~ Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of ~~this~~ subsection (9) to the extent that the law in question authorises any court to try a member of a disciplined force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under the disciplinary law of that force; but any court so trying such a member and convicting him or her shall in sentencing him or her to any punishment take into account any punishment ~~awarded~~ imposed on him or her under that disciplinary law.

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

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

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

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

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

Protection of freedom of thought, conscience and religion

12. ~~(1)~~ ~~(1)~~ Except with his or her own consent, no person shall be hindered in the enjoyment of his or her freedom of conscience, including freedom of thought and of religion, freedom to change

(a) Compromise language proposed by the UK, drawn from section 6(2)(g) of the Montserrat Constitution. Under consideration by Anguilla.

~~b~~—Amendment suggested by section 10 of Mrs Richardson's draft.

~~e~~—Amendment suggested by section 10 of Mrs Richardson's draft.

his or her religion or belief and freedom, either alone or in community with others, and both in public and in private, to manifest and propagate his or her religion or belief in worship, teaching, practice and observance.

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

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

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

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

~~(5)~~ ~~(a)~~ necessary in a democratic society—

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

~~(5)~~ ~~(6)~~ ~~(6)~~ References in this section to a religion shall be construed as including references to a religious denomination, and cognate expressions shall be construed accordingly.

Protection of right to education

13.—(1) This section is without prejudice to section 12.

(2) Every child of the appropriate age, as provided by law, shall be entitled to receive primary [and secondary] (a) education which shall, subject to subsection (4), be free.

(3) Except with his or her own consent (or, in the case of a minor, the consent of his or her parent or legal guardian), no person attending a public educational institution shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance.

(4) Every person who is the parent or legal guardian of a child shall be entitled to have his or her child (of whatever age) educated, at his or her own expense unless a law otherwise provides, in a private school (that is to say, a school other than one established by a public authority) and, in such a school, to ensure the religious and moral education of his or her child in accordance with his or her own convictions.

(5) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (4) to the extent that it is reasonably justifiable in a democratic society and to the extent that the law makes provision requiring private schools, as a condition of their being allowed to operate and on terms no more onerous than are applicable to schools established by a public authority, to satisfy—

(a) Under consideration by Anguilla.

- (a) such minimum educational standards (including standards relating to the qualifications of teaching staff and other staff) as may be prescribed by or under any law; and
- (b) such minimum standards imposed in the interests of public order, public morality or public health as may be so prescribed.

Protection of freedom of expression^a

~~13.14.~~ ~~(1)~~ ~~13.~~ ~~(1)~~ Except with his or her own consent, no person shall be hindered in the enjoyment of his or her freedom of expression, and for the purposes of this section the said freedom includes the freedom to hold opinions and to receive and impart ideas and information without interference, and freedom from interference with his or her correspondence and other means of communication.

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

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

~~(a)~~ that is reasonably required

~~(3)~~ ~~(i)~~ necessary in a democratic society—

- (a) in the interests of defence, internal security, public safety, public order, public morality or public health;
- (b) ~~(ii)~~ for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts or regulating telephony, telegraphy, posts, wireless, broadcasting or television or other means of communication or regarding public exhibitions or public entertainments;^b or
- (c) ~~(b)~~ that imposes restrictions upon public officers or teachers that are reasonably required for the purpose of ensuring the proper performance of their functions^c.

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

Protection of freedom of assembly and association

~~14.15.~~ ~~(1)~~ ~~14.~~ ~~(1)~~ Except with his or her own consent, no person shall be hindered in the enjoyment of his or her freedom of peaceful assembly and association, that is to say, his or her right peacefully to assemble freely and associate with other persons and in particular to form or belong to trade unions or other associations for the protection of his or her interests.

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

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

~~(a)~~ that is reasonably required;

~~(3)~~ ~~(i)~~ necessary in a democratic society—

- (a) in the interests of defence, internal security, public safety, public order, public morality or public health;^c

^a—Adapted from section 12 of Mrs Richardson's draft.

^b—Amendment suggested by section 12 of Mrs Richardson's draft.

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

~~(b)~~ that imposes restrictions upon public officers;

(c) ~~Provided~~ that are reasonably required for the proper performance of their functions,

~~(i) provided that~~ paragraph (b)~~(a)(ii) of this subsection~~ shall not apply in relation to a provision that operates so as to prohibit a trade union or other association from carrying out activities preventing or restricting persons who are not members of that trade union or other association from pursuing a particular trade, profession or employment unless that provision is contained in a written law;²

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

Protection of right to marry

~~—~~(4)

~~15.16.14. A (1)~~ [Notwithstanding anything in section 17~~15~~,² every man and woman of marriageable age (as determined by or under any law) has the right to marry a person of the opposite sex and to found a family.]~~(a)~~

(1) [Every man and woman of marriageable age (as determined by or under any law) has a right to marry and to found a family in accordance with laws enacted by the Legislature.]~~(b)~~

(1) [Notwithstanding anything in section 17~~(2)~~, every man and woman of marriageable age (as determined by or under any law) has a right to marry and to found a family in accordance with laws enacted by the Legislature.]~~(c)~~

~~(1)(2)~~ No person shall be compelled to marry, that is to say, to do so without his or her free and full consent.

~~(2)(3) (3)~~ Nothing in any law or done under its authority shall be held to contravene subsection (1)~~(1)~~ to the extent that it is reasonably justifiable~~necessary~~ in a democratic society—

(a) ~~(a)~~ in the interests of public order, public morality or public health;

(b) ~~(b) for~~ regulating, in the public interest, the procedures and modalities of marriage; or

(c) ~~(c)~~ for protecting the rights and freedoms of other persons.

~~(4) (4)~~ Spouses shall be entitled to equal rights and shall be subject to equal responsibilities—

(a) as between themselves and, both during the marriage and, if the marriage is dissolved, at its dissolution; and

(b) as regards their children, where there are any, both during the marriage and, if the marriage is dissolved, on and after its dissolution,

but this equality of rights and responsibilities shall be subject to such arrangements or measures as may be agreed, or as may be ordered by a court, in the interests of the spouses and their children.

Protection from discrimination ~~on the grounds of race, etc.~~~~(e)~~

~~16.17. — (1) 15. (1)~~ Subject to ~~the provisions of~~ subsections (4)~~(4)~~, ~~(5)~~² (5) and (7)~~(7) of this section~~,² no law shall make any provision which is discriminatory either of itself or in its effect.

(a) Anguilla proposal

(b) UK proposal

(c) Compromise UK proposal following discussions.

~~d~~—As recommended by paragraph 23 of the 2006 Report. The wording is taken from section 21 of Rev Niles' draft.

(e) Although not discussed during the negotiations, UK proposes to remove the words "on the grounds of race, etc." from the title of this provision, as the prohibited grounds of discrimination are wider than simply race.

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

(3) ~~(3)~~ In this section, the expression “discriminatory” means affording different treatment to different persons attributable wholly or mainly to their respective descriptions such as by sex, race, place of origin, political opinions, colour, language, religion, disability, colour, creed, political or other opinion, national or social origin, association with a national minority, property, birth, [sexual orientation, or other status]~~(a)~~ whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.

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

- (a) ~~(a)~~ [with respect to persons who are not Anguillians;] ~~(b)~~
- (a) (b) [with respect to the entry into or exclusion from, or the employment, engaging in any business or profession, movement or residence within, Anguilla of persons who are not Anguillian;] ~~(c)~~
- (b) [for the application, in the case of persons of any such description as is mentioned in subsection (3)~~(3) of this section~~ (or of persons connected with such persons), of the law with respect to adoption, marriage, divorce, burial, devolution of property on death or other like matters which is the personal law of persons of that description; ~~or~~] ~~(d)~~;
- (c) ~~(c)~~ for the imposition of taxation or appropriation of revenue by the Government of Anguilla or any local authority or body for local purposes; or
- (d) ~~(d)~~ [for the provision of services in favour of Anguillians]. ~~(e)~~

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

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

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

- (a) ~~(a)~~ whereby persons of any such description as is mentioned in subsection (3)~~(3) of this section~~ may be subjected to any restriction on the rights and freedoms guaranteed by sections 7, 10, 12, ~~10, 12, 13,~~ 14 and 15~~14 of this Constitution~~, being such a restriction as is authorised by paragraph (a)~~(a), (b)~~ or (e)~~(g)~~ of subsection (3)~~(3)~~ of section 7~~7~~, subsection (2)~~(2)~~ of section 10~~10~~, subsection 0 of section 12(5), subsection 0 of section 14~~12, subsection (2) of section 13,~~ or subsection 0~~(3)~~ of section 15~~14~~, as the case may be; ~~or~~
- (b) ~~(b)~~ whereby persons of any such description as is mentioned in subsection (3)~~(3)~~ may be accorded any privilege or advantage which, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is objectively and reasonably justifiable in a democratic society and there is a reasonable proportionality between the means employed and the purpose sought to be ~~realized~~ realised; or

(a) These words remain under consideration by Anguilla.

(b) Anguilla proposal.

(c) UK proposal, under consideration by Anguilla.

(d) Under consideration by Anguilla.

e— This subsection permitting discrimination in the provision of services in favour of Anguillians has been added to the recommendations of the 2006 Report at the request of Members of the House of Assembly in 2009. (e) Under consideration by Anguilla, including for deletion and/or consolidation with a reformulated subsection (4)(a).

- (c) ~~(e)~~ which is reasonably justifiable in a democratic society for the protection or well-being of women.^a

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

Protection of the environment^b

~~17,18.~~ ~~(1)~~ ~~16.~~ ~~(1)~~ The Assembly Legislature and the Government of Anguilla shall, in all their decisions, have due regard to the need to foster and protect an environment that is not harmful to the health or well-being of present and future generations, while promoting justifiable economic and social development.

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

- (a) ~~(a)~~ limit pollution and ecological degradation;
- (b) ~~(b)~~ promote conservation and biodiversity; and
- (c) ~~(c)~~ secure ecologically sustainable development and use of natural resources.

Protection of children^c

~~18,19.~~ ~~17.~~ The Assembly Legislature may, in addition to any rights and freedoms provided in this ~~Chapter~~ Part which afford protection to children, enact such laws as it considers fit to promote the well-being and welfare of children and to afford them protection from any harm, exploitation, neglect, abuse, maltreatment or degradation and to provide them with such facilities as would aid their growth and development.

Derogations from fundamental rights and freedoms under emergency powers

~~19,20.~~ ~~18.~~ Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of section 4 or section ~~14 of this Constitution~~ 15 to the extent that the law authorises the taking during any period of public emergency of measures that are reasonably justifiable for dealing with the situation that exists in Anguilla during that period.

Protection of persons detained under emergency laws^d

~~20,21.~~ ~~(1)~~ ~~19.~~ ~~(1)~~ When a person is detained by virtue of any such law as is referred to in section ~~7 of this Constitution~~ 20 the following provisions shall apply, ~~that is to say,~~ ~~—~~

- (a) ~~(a)~~ he or she shall, as soon as reasonably practicable and in any case not more than four days after the commencement of his or her detention, be furnished with a statement in writing in a language that he or she understands specifying ~~in detail~~ the grounds ~~upon~~ on which he or she is detained;
- (b) ~~(b)~~ not more than ~~fourteen~~ 14 days after the commencement of his or her detention, a notification shall be published in the Gazette stating that he or she has been detained and giving particulars of the provision of law under which ~~his~~ the detention is authorised;
- (c) ~~(c)~~ not more than one month after the commencement of his or her detention and thereafter during ~~his~~ the detention at intervals of not more than six months, his or her case shall be

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

^b— This provision is taken from section 18 of the Cayman Islands Constitution and section 18 of the TCI Constitution.

^c— This provision is taken from section 30 of the VI Constitution.

^d— This wording is taken from section 23 of Rev Niles' draft.

reviewed by an independent and impartial tribunal established by law and presided over by a person appointed by the Chief Justice from among persons who are or have been judges of the High Court or the Court of Appeal or are qualified for appointment as such judges;

- (d) ~~(d)~~ he or she shall be afforded reasonable facilities to consult a legal representative of his or her own choice who shall be permitted to make representations to the tribunal appointed for the review of the case of the detained person; and
- (e) ~~(e)~~ at the hearing of his or her case by the tribunal appointed for the review of his or her case he or she shall be permitted to appear in person or by a legal representative of his or her own choice.

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

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

Enforcement of protective provisions

~~21.22.~~ ~~(1)~~ ~~20.~~ ~~(1)~~ If any person alleges that any of the provisions of sections 3~~3~~ to 19~~17~~ (inclusive) of this Constitution has been, or is being, or is likely to be, ^b contravened in relation to him or her (or, in the case of a person who is detained, if any other person alleges such a contravention in relation to the detained person), then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the High Court for redress.

(2) ~~(2)~~ The High Court shall have original jurisdiction to hear and determine any application made by any person in pursuance of subsection (1)~~(1)~~ of this section and may grant such remedies or reliefs, make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of, any of the provisions of the said sections 3~~3~~ to 19~~17~~ (inclusive) to the protection of which the person concerned is entitled.

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

(4) ~~(4)~~ If in any proceedings in any court (other than the Court of Appeal, the High Court or a court martial) any question arises as to the contravention ~~in~~^{of} any of the provisions of sections 3 to 17~~19~~ (inclusive) of this Constitution, the person presiding in that court may, and shall if any party to the proceedings so requests, refer the question to the High Court unless, in his or her opinion, the raising of the question is merely frivolous or vexatious.

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

(6) ~~(6)~~ An appeal shall lie as of right to the ~~court~~^{Court} of Appeal from any final determination of any application or question by the High Court under this section, and an appeal shall lie as of right to Her Majesty in Council from the final determination by the Court of Appeal of the appeal in any such case.^d

^a—Amendment suggested by section 16 of Mrs Richardson’s draft.

^b—“or is likely to be” inserted as recommended by paragraph 26 of the 2006 Report.

^e—Amendment suggested by section 17 of Mrs Richardson’s draft. Removes “other means of redress” as recommended by paragraph 27 of the 2006 Report.

^d—Amendments suggested by section 17 of Mrs Richardson’s draft.

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

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

Declaration of emergency

21. (1) The Governor may, after consultation with Cabinet and acting on its advice, b by Emergency powers

~~A Proclamation published in the manner provided in subsection (2), declare that a state of emergency exists~~ of Emergency for the purposes of this Chapter.

~~22.23.(2) A proclamation shall~~ Part may be taken to be published if it is published in accordance with the Emergency Powers (Overseas Territories) Order 2017, (c) which regulates the Gazette or in a newspaper published exercise of emergency powers in Anguilla, or if it is posted in prominent public places or announced on the radio.

~~(3) Every declaration of emergency shall lapse~~

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

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

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

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

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

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

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

PART 2 CHAPTER 2

(a) Under consideration by Anguilla.

(b) As recommended by paragraph 28 of the 2006 Report.

(c) S.I. 2017/181.

INTERPRETATION

Interpretation

~~23:24.~~ ~~(1)~~ ~~22. (1)~~ In this Constitution, unless it is otherwise provided or required by the context, ~~—~~

“Accountant General” means the officer established by section 133~~124~~;

“Act” means an Act of the Legislature;~~(a)~~

“Advisory Commission on the Prerogative of Mercy” means the Commission established by section 107~~100~~;

“Anguillian” means a person defined as an Anguillian in section 106;~~(b)~~

“Anguillian Status Commission” means the Commission established by section 106~~99~~;

“Appropriation Bill” has the meaning given in section 125(1);

“Appropriations Committee” means the Committee of the House of Assembly established by section 130~~121~~;

“Assembly” means the House of Assembly established by section 57~~53~~;

“Attorney-General” means the officer established by section 42;~~40~~;

“Cabinet Secretary” means the officer established by section 50~~47~~ and appointed in accordance with section 53(5)~~49(5)~~;

“Chief Auditor” means the officer established by section 136~~126~~;

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

“Complaints Commissioner” means the Commissioner established by section 112~~105~~;

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

“Court of Appeal” means the Court of Appeal established by the Supreme Court Order 1967~~;~~~~(c)~~

“Director of Public Prosecutions” means the officer established by section 43~~41~~;

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

“disciplined force” means ~~—~~

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

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

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

“Electoral District Boundary Commission” means the Commission established by section 93~~86~~;

“Financial Services Commission” means the Commission established by section 100~~93~~;

“financial year” means the period of 12 months ending on 31 December in any year or such other financial year as may be prescribed by or under an Act;

“Freedom of Information” means the right established by section 115~~108~~;

“Freedom of Information Commissioner” means the Commissioner established by section 115~~108~~;

“functions” includes jurisdictions, powers and duties;

(a) Although not discussed during the negotiations, the UK proposes including this definition.
(b) Although not discussed during the negotiations, the UK proposes including this definition.
(c) S.I. 1967/223, amended by S.I. 1983/1108, 2000/3060.

“Gazette” means the Official Gazette of Anguilla;

“Government of Anguilla” means the body defined in section 37(1)~~34~~;

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

“House of Assembly” means the House of Assembly established by section 57~~53~~;

“Human Rights Commissioner” means the Commissioner established by section 111~~104~~;

“Integrity Commission” means the Commission established by section 104~~97~~;

“Judicial and Legal Services Commission” means the Commission established by section 102~~95~~;

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

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

“legal representative” means a licensed legal practitioner;

“Legislature” means the Legislature of Anguilla established by section 57(1);(a)

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

“Minister of Finance” means the Minister responsible for finance in the Government of Anguilla;(b)

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

“National Security Commission” means the Commission established by section 99~~92~~;

“Police Complaints Commissioner” means the Commissioner established by section 113~~106~~;

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

“Police Service Commission” means the Commission established by section 97~~90~~;

“Public Accounts Committee” means the Committee established by section 132~~123~~;

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

“public office” means, subject to section 25~~23~~, any office of emolument in the public service;

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

“Public Procurement Commissioner” means the Commissioner established by section 114(2)~~102~~;

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

“Public Service Commission” means the Commission established by section 95~~88~~;

“Register of Interests” means the Register established by section 105~~98~~;

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

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

“Standing Committee” means a Committee of the Assembly provided for by section 84~~68~~;

(a) Although not discussed during the negotiations, the UK proposes including this definition.

(b) Although not discussed during the negotiations, the UK proposes including this definition.

“Supplementary Appropriation Bill” has the meaning given in section 125(3); (a) and

“Teaching Service Commission” means the Commission established by section 96~~89~~.

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

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

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

(a) ~~(a)~~ Her Majesty is at war; or

(b) ~~(b)~~ a ~~declaration~~ Proclamation of ~~emergency~~ Emergency is in force in Anguilla under ~~section 18 of this Constitution~~ the Emergency Powers (Overseas Territories) Order 2017.

(5) ~~(5)~~ In relation to any person who is a member of a disciplined force raised under the law of Anguilla, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of ~~Chapter~~ Part 1 other than sections ~~33, 6, 6 and 77 of this Constitution.~~

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

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

References to public office

~~24, 25.~~ ~~(1)~~ ~~23.~~ ~~(1)~~ For the purposes of this Constitution, a person shall not be considered to hold a public office by reason only that, ~~—~~

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

(b) ~~(b)~~ he or she is in receipt of any remuneration or allowances in respect of his or her tenure of ~~the~~ office of Minister, Speaker, Deputy Speaker or ~~Member~~ member of the Assembly, or member of the Public Service Commission, the Teaching Service Commission, the Judicial and Legal Services Commission, the Police Service Commission, or of any other Commission ~~[or Commissioner]~~ (d) established by this Constitution.

(2) ~~(2)~~ If it is provided by any law in force in Anguilla that an office shall not be a public office for the purposes of section 59(1)(a) ~~55(1)(a).~~, this Constitution shall have effect accordingly as if that provision of that law were enacted herein.

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

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

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

(a) Although not discussed during the negotiations, the UK proposes including this definition.

(b) Although it is the modern preference, it has proven to be unduly pedantic and cumbersome to replace “he”, “his” and “him” everywhere in the Constitution with “he or she”, “his or her”, and “him or her”.

(c) Wording taken from section 3 of the VI Constitution.

(d) Additional reference to “Commissioner” would seem appropriate.

Appointments^a

~~25:26.~~—(1)~~24. (1)~~ In this Constitution, unless it is otherwise provided or required by the context, any reference to power to make appointments to any office shall be construed as including a reference to power to make appointments on promotion or transfer to that office and to power to appoint a person to perform the functions of that office during any period when it is vacant or the holder of it is unable (whether by reason of absence or infirmity of body or mind or any other cause) to perform those functions.

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

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

Re-election or ~~reappointment~~^{re-appointment}

~~26:27:25.~~ Any person who has vacated his ~~or her~~ seat in the Assembly or has vacated any office constituted by or under this Constitution may, if qualified, again be elected as a member of the ~~House~~^{Assembly} or appointed to that office, as the case may be, from time to time in accordance with this Constitution.

Removal from office

~~27:28:26.~~ In this Constitution, unless it is otherwise provided or required by the context, any reference to power to remove a public officer from office shall be construed as including a reference to a power conferred by any law to ~~remove~~^{require} or permit that officer to retire from the public service.

Resignation^d

~~28:29:27.~~ For the purposes of this Constitution, the resignation of the holder of any office that is required to be addressed to any person shall have effect from the time that it is received by that person, unless otherwise specified in the letter of resignation.

Power to amend or revoke instruments

~~29:30:28.~~ Where any power is conferred by this Constitution to make any proclamation, order or regulations or to give any directions, the power shall be construed as including a power exercisable in like manner to amend or revoke any such proclamation, order, regulations or directions.

PART 3 CHAPTER 3

^a Taken from section 4 of the VI Constitution.

^b Wording taken from section 5 of the VI Constitution.

^c Wording taken from section 6 of the VI Constitution.

^d Wording taken from section 7 of the VI Constitution.

THE GOVERNOR

The Governor^a

~~30.31.~~ ~~(1)29. (1)~~ There shall be a Governor of Anguilla, who shall be appointed by Her Majesty and hold office during Her Majesty's pleasure, and who shall be Her Majesty's Representative in Anguilla.

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

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

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

(5) ~~(5)~~ ~~[The Premier and the Leader of the Opposition shall be consulted before the appointment of any person to the office of Governor and if both the Premier and the Leader of the opposition object to the appointment, that person shall not be appointed.](d)~~

Office of Deputy Governor

~~31.32.~~ ~~(1)30. (1)~~ There shall be a Deputy Governor who shall be ~~such person, being an Anguilliane as defined and who shall be appointed by the Governor in accordance with section 53(1)99, but any appointment shall require the prior approval of this Constitution, as Her Majesty may designate as such by instructions given by Her Majesty through a Secretary of State and shall hold office during Her Majesty's pleasure.~~

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

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

~~(4) The powers and authority of the Governor shall not be affected by any authority of the Deputy Governor under subsection 33(3) of this section and, subject to the provisions of this Constitution and of any law by which any function which the Deputy Governor is authorised to exercise is conferred, the Deputy Governor shall comply with such instructions relating to the exercise of that function as the Governor, acting in his or her discretion, may from time to time address to him.~~

(3) ~~Provided that or her; but~~ the question whether or not the Deputy Governor has in any matter complied with any such instructions shall not be enquired into in any court.

^a—As recommended by paragraph 30 of the 2006 Report. The wording is taken from section 8 of the VI Constitution.

(b) Although not discussed during the negotiations, the UK proposes the inclusion of this for clarity on the face of the Constitution as to what this means in practice.

(c) Although not discussed during the negotiations, the UK has proposed the inclusion of "affirmation" to ensure consistency with the remainder of the Constitution.

(d) Not agreed. Opposed by UK.

^e—As recommended by paragraph 31 of the 2006 Report.

(4) ~~(5)~~ Any authority given under subsection 33(3) ~~of this section~~ may at any time be varied or revoked by Her Majesty by instructions given through a Secretary of State or by the Governor, acting in his or her discretion, by writing under his or her hand.

(5) ~~(6)~~ In subsection 33(3) ~~of this section~~ the reference to any functions of the office of Governor does not include a reference to:—

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

(6) ~~(7)~~ If the office of Deputy Governor is vacant or the person holding that office is acting in the office of Governor under section 33~~31 of this Constitution~~ or is for any other reason unable to perform the functions of the office of Deputy Governor, then such person being an Anguillian as Her Majesty may designate by instructions given through a Secretary of State shall act in the office of Deputy Governor during Her Majesty's pleasure, ~~b subject to subsection (1)~~.

Acting Governor

~~32.33.~~ ~~(1) 31. (1)~~ During any period when the office of Governor is vacant or the Governor is absent from Anguilla, or is for any other reason unable to perform the functions of the office of Governor, such person as may be designated by Her Majesty by instructions ~~to the Governor~~ through a Secretary of State, or if no person is so designated and able to perform those functions, the Deputy Governor, shall, during Her Majesty's pleasure, act in the office of Governor and shall perform the functions of that office accordingly.

(2) ~~(2)~~ Before assuming the functions of the office of Governor, the person designated or, as the case may be, the Deputy Governor shall make the oaths or affirmations directed by section 31(4)~~29(4) of this Constitution~~ to be made by the Governor.

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

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

- (a) ~~(a)~~ at any time when there is a subsisting appointment of a deputy under section 35~~33 of this Constitution~~; or
- (b) ~~(b)~~ by reason of absence from Anguilla for a period not exceeding ~~forty eight~~48 hours.

Functions of Deputy Governor

~~33.34.~~ ~~(1) 32. (1)~~ Subject to subsection (2)~~(2)~~, the Deputy Governor shall—

- ~~(a)~~ assist the Governor in the exercise of his or her functions ~~relating to matters for which the Governor is responsible under section 42~~;
- (a) ~~(b)~~ assist the Governor in the exercise of such of his other functions, being functions in the exercise of which the Governor is not obliged to act in accordance with the advice of any other person or authority, as the Governor, acting in his discretion, may direct; ~~(d)~~ and
- (b) ~~(c)~~ perform such other functions, not of a ministerial nature, as (subject to this Constitution and any other law) may be assigned to the Deputy Governor, at the request of the Premier, by the Governor acting in his or her discretion.

(a) 1980 c.67.

~~b~~ Amended in accordance with section 36 of the VI Constitution.

c Wording taken from section 38 of the VI Constitution.

(d) UK proposal based to streamline this provision based on s.24 of the Montserrat Constitution.

(2) ~~(2)~~ Under the authority of the Governor, the Deputy Governor shall be the head of the public service and shall be responsible for the administration of any department of government, with respect to the terms and conditions of service of persons holding or acting in offices in the Public Service ~~public service~~ or the Teaching Service ~~teaching service~~, without prejudice to sections 95~~84~~ and 96~~85.a~~.

(3) The Governor, acting in his or her discretion, may give directions to the Deputy Governor as to the exercise of the responsibilities referred to in subsection (2) and the Deputy Governor shall comply with any such directions. ~~(b)~~

Governor's deputy

~~34.35.~~ ~~(1)~~ ~~33. (1)~~ Whenever the Governor; ~~—~~

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

(b) ~~(b)~~ is suffering from an illness which he or she has reason to believe will be of short duration, ~~he~~ the Governor may in his or her discretion, by writing under his or her hand, appoint the Deputy Governor or, in the absence of the Deputy Governor, some other suitable person who is an Anguillian to be his or her deputy during such absence or illness and in that capacity to perform on his or her behalf such of the functions of the office of Governor as may be specified in the instrument by which ~~he~~ the deputy is appointed.

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

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

PART 4 ~~CHAPTER 4~~

THE EXECUTIVE

Executive authority of Anguillae

~~35.36.~~ ~~(1)~~ ~~34. (1)~~ The executive authority of Anguilla shall be vested in Her Majesty.

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

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

a — Note that this wording makes it clear that responsibility for the administration of the public service is transferred to the Deputy Governor.

(b) UK proposal based on s.24 of the Montserrat Constitution. For further consideration by Anguilla.

e — Wording taken from section 26 of Mrs Richardson's draft.

Cabinet and ~~government~~ Government of Anguilla~~a~~

~~36.37.~~—(1)~~35. (1)~~ There shall be a Cabinet in and for Anguilla which shall consist of the Premier, not more than three other Ministers and two non-voting ex-officio members, namely, the Deputy Governor and the Attorney-General ~~who shall both be without vote~~; and such Cabinet, together with Her Majesty who is represented in Anguilla by the Governor, shall constitute the Government of Anguilla.

(2) ~~(2)~~—The number of Ministers referred to in subsection (1)~~(1)~~ may be increased by law, but in no circumstances may the number of Ministers be increased so that the total number of Ministers exceeds a number arrived at by subtracting one from the total number of elected members of the House of Assembly and then dividing by two.

(3) ~~(3)~~—The ~~cabinet~~ Cabinet shall have responsibility for the formulation of policy, including directing the implementation of such policy, insofar as it relates to every aspect of government, except those matters for which the Governor has special responsibility under section 44~~42~~, and the Cabinet shall be collectively responsible to the Assembly for such policies and their implementation.

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

(5) ~~(5)~~—Upon the coming into effect ~~force~~ of this Constitution, the Special Advisers Act ~~shall be~~ (b) is repealed.~~e~~

Appointment of Ministers

~~37.38.~~—(1)~~36. (1)~~ The Governor, acting in his or her discretion, whether after a general election or at any time thereafter if it shall become necessary, shall appoint as the Premier the elected member of the Assembly who, in his judgment ~~or her judgement~~, is likely to command the support of a majority of the elected members of the Assembly.

(2) ~~(1A)~~ If the Premier dies while in office, the Governor, acting in his or her discretion, shall appoint as the Premier the elected member of the Assembly who, in his or her judgement, is likely to command the support of a majority of the elected members of the Assembly.

(3) ~~(1B)~~ Notwithstanding subsection (1)~~(1)~~, the Governor shall not appoint as Premier a person who has held office as Premier or Chief Minister during two consecutive parliamentary terms unless at least one parliamentary term has expired since he or she last held that office, and for the purposes of this subsection a parliamentary term shall be deemed to be a period commencing when the House of Assembly first meets after being constituted under this Constitution or after its dissolution at any time, and terminating when the Assembly is next dissolved.

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

(5) ~~(3)~~ The Governor, acting ~~in accordance with~~ the advice of the Premier, shall appoint one of the Ministers as Deputy Premier.

(6) ~~(4)~~ The appointment of the Deputy Premier under subsection (5)~~3~~ may be revoked by the Governor, acting ~~in accordance with~~ the advice of the Premier, but such revocation shall not in itself affect the Minister's tenure in office as a Minister.

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

^a—Wording taken from section 27 of Mrs Richardson's draft. Note the absence from Cabinet of the Governor, which is the situation in Gibraltar (section 45); and Bermuda (section 57). In Cayman Islands (section 44); the Virgin Islands (section 47); and Montserrat (section 32), where the Governor is not a member of Cabinet, the provision is that the Governor shall "so far as practicable" attend and preside at Cabinet meetings, and the Governor and Premier together decide on the Cabinet agenda.

^(b) [Citation of relevant Anguilla Law required]. Anguilla to confirm.

^e—With the increase of the number of Ministers to 6, there will be no need any longer for members of the Assembly to be employed as ministerial assistants.

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

Tenure of office of ~~ministers~~ Ministers

~~38.39.~~ ~~(1)~~ ~~37. (1)~~ If a motion on the Order Paper that the Assembly should declare a lack of confidence in the Government of Anguilla receives in the Assembly the affirmative votes of a majority of all the elected members of the Assembly, the Governor shall, by instrument under the public seal, revoke the appointment of the Premier; but before so revoking the Premier's appointment the Governor shall consult with the Premier and, if the Premier so requests, the Governor, acting in his or her discretion, may dissolve the Assembly instead of revoking the appointment.^a

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

(3) ~~(3)~~ Any Minister shall vacate his or her office if, —

- (a) ~~(a)~~ he or she ceases to be a member of the Assembly for any reason other than a dissolution;
- (b) ~~(b)~~ he or she is not an elected member of the Assembly when it first meets after a general election;
- (c) ~~(c)~~ the Integrity Commission determines that he or she has breached the Code of Conduct for Persons in Public Life for the time being in effect;^b
- (d) ~~(d)~~ he or she is required under ~~the provisions of~~ section 61(2) ~~58 of this Constitution~~ to cease to perform his or her functions as a member of the Assembly; or
- (e) ~~(e)~~ he or she resigns it by writing under his or her hand addressed to the Governor.

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

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

(5) ~~(5)~~ The Speaker shall give priority to any motion ~~proposing that the Assembly should declare~~ a lack of confidence in the ~~government~~ Government of Anguilla which is lodged with him or her, and any such motion shall be dealt with promptly and in any event within one month.

Performance of functions of Premier in certain events^e

~~39.40.~~ ~~(1)~~ ~~38. (1)~~ If the Premier is expected to be absent from Anguilla for more than ~~forty-eight~~ 48 hours, the Governor shall authorise the Deputy Premier to perform the functions of the office of Premier ~~to perform the functions of Premier~~; and the Governor shall revoke this authority on the return to Anguilla of the Premier.

(2) ~~(2)~~ If both the Premier and the Deputy Premier are expected to be absent from Anguilla for more than ~~forty-eight~~ 48 hours, the Governor shall authorise another Minister designated by the Premier to perform the functions of the office of Premier; and the Governor shall revoke this authority on the return to Anguilla of either the Premier or the Deputy Premier.

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

(4) ~~(4)~~ If the Cabinet advises the Governor that both the Premier and the Deputy Premier are unable to perform their functions by reason of absence or illness, the Governor shall authorise another Minister designated by the Premier (or, if the Premier makes no such designation, appointed by the Governor on the advice of ~~the~~ Cabinet, and where the Cabinet fails to give such advice within ~~twenty-~~

^a — As recommended by paragraphs 45 and 46 of the 2006 Report. Taken from section 53(1) of the VI Constitution.

^b — As recommended by paragraph 72 of the 2006 Report. Wording taken from section 34 of the TCI Constitution.

^e — This section dealing with the Deputy Premier is taken from section 55 of the VI Constitution.

~~four~~24 hours of the Governor seeking such advice, selected by the Governor in his or her discretion) to perform the functions of the office of Premier; and the Governor shall revoke this authority if the Cabinet advises him or her that the Premier or the Deputy Premier is again able to perform his or her functions.

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

Assignment of responsibilities ~~and to~~ Ministers

~~40.41.~~39.—(1)~~39.~~ The Governor, acting in accordance with the advice of the Premier, shall, by directions in writing, assign to any Minister responsibility for the conduct (subject to ~~the provisions of~~ this Constitution and ~~of~~ any other law) of any business of the Government of Anguilla, including responsibility for the administration of any department of government, and shall likewise remove or amend any such assignment.

(2) [Without prejudice to section 44(2), (3) and (4), a Minister shall not be assigned responsibility under this section for any of the matters mentioned in section 44(1).]

(3) The Governor may not confer on any Minister authority to exercise any function that is conferred or imposed by this Constitution or any other law on the Governor or any person or authority other than a Minister; but nothing in this subsection affects the power of the Legislature under section 57(2).

(4) For the avoidance of doubt, subject only to subsections (2) and (3), any matter may be assigned to a Minister under subsection (1).

(5) Where a Minister has been assigned responsibility under this section for the administration of any department of government, the Minister shall (subject to this Constitution and any other law) exercise direction and control over that department, including directing the implementation of government policy as it relates to that department, and, subject to such direction and control, the department shall, unless otherwise agreed between the Governor and the Premier, be under the supervision of a permanent secretary who shall be a public officer; but two or more departments may be placed under the supervision of one permanent secretary.

(6) A Minister assigned responsibility for any matter under this section shall exercise his or her responsibility in accordance with the policies of the Government of Anguilla as determined by the Cabinet and in accordance with the collective responsibility of the members of the Cabinet for the policies and decisions of the Government.

(7) The Governor, acting in his or her discretion, may at any time request from a Minister any official papers or seek any official information or advice available to that Minister with respect to a matter for which that Minister is responsible under this section, and shall inform the Premier of any such request.](a)

Attorney-General~~b~~

~~41.42.~~(1)40. (1) There shall be an Attorney-General of Anguilla ~~appointed by the Governor after consultation with the Premier and Leader of the Opposition~~, whose office shall be a public office and who shall be appointed in accordance with section 103~~96 of this Constitution.~~

~~(2) — A person shall not be appointed as Attorney-General if both the Premier and the Leader of the Opposition object to the appointment of that person.~~

(2) ~~(3)~~ The Attorney-General shall be the principal legal adviser to the Government of Anguilla and the Assembly, [and —

(a) these functions may be exercised by the Attorney-General in person or by officers subordinate to him or her acting under and in accordance with his or her general or special instructions; and

(a) Subsections (2) to (7) proposed by UK, based on BVI Constitution section 56(2) to (7). Under consideration by Anguilla.

b — As recommended by paragraph 70 of the 2006 Report. Wording taken from section 58 of the VI Constitution.

c — Note that section 96(6) requires that preference should be given to Anguillians.

(b) in the exercise of these functions the Attorney-General shall not be subject to the direction or control of any other person or authority, and any such subordinate officer shall not be subject to the direction or control of any person or authority other than the Attorney-General.](a)

Director of Public Prosecutions

~~42.43.~~—(1)~~41. (1)~~ There shall be a Director of Public Prosecutions, whose office shall be a public office and who shall be appointed in accordance with section 103~~96 of this Constitution.~~

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

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

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

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

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

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

Governor's special responsibilities

~~43.44.~~—(1)~~42. (1)~~ The Governor shall be responsible for the conduct (subject to this Constitution and any other law) of any business of the Government of Anguilla, including the administration of any department of government, with respect to the following matters,=

- (a) ~~(a) external affairs,~~ subject to subsection (4)~~(4), external affairs save and except taxation and the regulation of finance and financial services;~~
- (b) ~~(b)~~ defence, including the armed forces;
- (c) ~~(c)~~ internal security, including the Police Service, without prejudice to section 99~~90;~~
- (d) ~~(d)~~ the administration of the courts;
- (e) [the functions conferred on the Governor by this Constitution or any other law in relation to the public service.](d)

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

(a) UK proposal, based on TCI Constitution section 41(2). Under consideration by Anguilla.

b—As recommended by paragraph 71 of the 2006 Report. Wording taken from section 59 of the VI Constitution.

e—Wording taken from section 60 of the VI Constitution, save that paragraph (1)(d) is transferred to the Deputy Governor at section 32(3).

(d) This is linked to the UK proposal concerning the Deputy Governor and is based on the model in the Montserrat Constitution.

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

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

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

- (a) ~~(a)~~ the Caribbean Community, the Organisation of Eastern Caribbean States, the Association of Caribbean States, the United Nations Economic Commission for Latin America and the Caribbean, or any other Caribbean regional organisation or institution;
- (b) ~~(b)~~ other Caribbean regional affairs relating specifically to issues that are of interest to or affect Anguilla;
- (c) ~~(c)~~ the relationship between Anguilla and St Maarten, St Martin,^a and the United States Virgin Islands in matters of mutual interest;
- (d) ~~(d)~~ tourism and tourism-related matters;
- ~~(d)~~ (e) taxation and the regulation of finance and financial services; and
- ~~(e)~~ (f) (e) European Union matters directly affecting the interests of Anguilla.

(5) ~~(5)~~ The terms and conditions referred to in subsection (4)~~(4)~~ are the following:—

- (a) ~~(a)~~ separate authority shall be required from or on behalf of a Secretary of State for the commencement of formal negotiation and the conclusion of any treaty or other international agreement by the Government of Anguilla, provided that general authority may be granted in specified matters to commence the formal negotiation of, and where it is deemed appropriate, to conclude any such treaty or international agreement;
- (b) ~~(b)~~ no political declaration, understanding or arrangement in the field of foreign policy shall be signed or supported in the name of the Government of Anguilla without the prior approval of a Secretary of State;
- (c) ~~(c)~~ a formal invitation to a member of government or Head of State of another country to visit Anguilla shall not be issued without prior consultation with the Governor;
- (d) ~~(d)~~ the costs of any activities in pursuance of subsection (4)~~(4)~~ shall be borne by the Government of Anguilla;
- (e) ~~(e)~~ the Premier or other ~~Ministers~~ Minister shall keep the Governor fully informed of any activities in pursuance of subsection (4)~~(4)~~; and
- (f) ~~(f)~~ the Premier or other Minister shall provide to the Governor on request all papers and information, including the text of any instrument under negotiation, available to the Premier or other Minister with respect to any activities in pursuance of subsection (4)~~(4)~~.

(6) ~~(6)~~ Any matter that is delegated to the Premier or to any other Minister under subsection (4) shall be performed by the Premier or such other Minister in a manner that is in the best interests of Anguilla and not prejudicial to the interests of Her Majesty and, for this purpose, the Governor and the Premier shall from time to time hold conference to ensure the proper safeguard of those interests.

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

^a— Note that St Maarten and St Martin are added to the provision in the VI Constitution.

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

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

(9) [Before exercising any function with respect to any matter mentioned in subsection (1)(a), (b), and (d), the Governor shall consult the Cabinet but may act against any advice given to him or her by the Cabinet; but the Governor shall not be obliged to consult the Cabinet in any case in which, in his or her judgement—

(a) it is in the public interest that he or she should act without consulting the Cabinet;

(b) the matters to be decided are too trivial to require the advice of the Cabinet; or

(c) the matters to be decided are too urgent to admit the Governor obtaining the advice of the Cabinet by the time within which it may be necessary for him or her to act.

(10) The question of whether a matter falls within the scope of subsection (1) shall be determined by the Governor acting in his or her discretion.](c)

Exercise of Governor's functions

45.—(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 the Governor is responsible under section 44;

(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 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

^a—Subsections (1) to (8) are taken from section 60 of the VI Constitution.

^(b) Anguilla proposal, opposed by UK.

^(c) UK counterproposal following the negotiations based on s.39(7) and (8) of the Montserrat Constitution.

(b) such advice would affect any of the matters referred to in section 44(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 he or she has so exercised that function shall not be enquired into in any court.

(7) When 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.

Oaths to be taken by members of Cabinet

~~44.46.43.~~ Every member of the Cabinet shall, before entering upon the duties of his or her office as a member, make before the Governor an oath or affirmation of allegiance ~~in the form set out in the Schedule to this Constitution~~ and an oath or affirmation for the due execution of that office in ~~such form as may be prescribed by any law in force in Anguilla or, if no law in that behalf is for the time being in force, in the form set out in the Schedule to this Constitution~~ the forms set out in Schedule 1.

Summoning of persons to Cabinet

~~45.47.44.~~ The Premier may summon any public officer to a meeting of the Cabinet whenever the business before the Cabinet renders the presence of that officer desirable ~~a, and the Premier shall summon such an officer if the Governor, acting in his or her discretion, so requests.~~

Summoning of Cabinet and transaction of business

~~—(1)45.-(1)~~ The Cabinet shall not be summoned except by the authority of the Premier or the Governor, acting in his or her discretion ~~b~~

~~46.48.~~ ~~Provided that, but~~ the Premier shall summon the Cabinet if not less than two ~~elected members of the Cabinet~~ Ministers so request in writing.

(1) ~~(2)~~ No business shall be transacted at any meeting of the Cabinet unless there are at least 50% per cent of the Ministers present including the person in the chair. ~~e~~

(2) ~~(3)~~ Subject to ~~the provisions of the last foregoing~~ subsection (1), the Cabinet shall not be disqualified for the transaction of business by reason of ~~any~~ vacancy in the membership of the Cabinet (including any vacancy not filled when the Cabinet is first constituted or is reconstituted at any time) and the validity of the transaction of business in the Cabinet shall not be affected by reason only of the fact that some person who was not entitled to do so took part ~~therein~~ it.

Presiding in Cabinet

~~47.49.-(1)46.-(1)~~ The ~~Premier~~ Governor shall, so far as ~~is~~ practicable, attend and ~~preside at~~ chair meetings of the Cabinet ~~d but shall not vote.~~

(2) ~~(2)~~ In the absence of the Governor, the Premier, or in his or her absence, the Deputy Premier shall ~~preside~~ chair any meeting of the Cabinet.

a — As recommended by paragraph 66 of the 2006 Report.

b — As recommended by paragraph 67 of the 2006 Report.

e — As recommended by paragraph 68 of the 2006 Report.

d — As recommended by paragraph 69 of the 2006 Report.

Cabinet Secretary^a

~~48.50.~~—(1)~~47. (1)~~ There shall be a Cabinet Secretary who shall be an Anguillian, whose office shall be a public office and who shall be appointed in accordance with section 53(5)~~78, provided that;~~ but if at any time he or she cannot conveniently discharge the functions of Cabinet Secretary those functions shall be discharged by such public officer as may be designated in that behalf by the Governor, acting after consultation with the Premier.

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

(3) ~~(3)~~ The Cabinet Secretary shall, ~~—~~

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

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

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

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

Public Seal^{seal}

~~49.51.48.~~—The Governor shall keep and use the public seal for sealing all things that should pass that seal.

Power to constitute offices

52. [Subject to this Constitution and any other law in force in Anguilla, the Governor, in Her Majesty's name and on Her Majesty's behalf, may constitute offices for Anguilla.](d)

PART 5 CHAPTER 5

THE PUBLIC SERVICE

Public service general

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

(b) UK agreed during the negotiations to propose wording in relation to these subsections, but would in fact welcome further clarification from Anguilla as to the proposed role of the Cabinet Secretary.

^c—Removed from the previous “Miscellaneous” Chapter.

(d) It was agreed during the negotiations to reinstate a provision on the power to constitute offices using the text from the existing Constitution. However, the UK proposes here a more streamlined version based on s.28 of the Montserrat Constitution.

Power to appoint, etc., to public offices^a

~~50.53.~~ (1) ~~49. (1)~~ Power to make appointments to public offices and to remove and to exercise disciplinary control over persons holding or acting in such offices shall vest in:—

- (a) ~~(a)~~ the Governor, acting after consultation with the Premier and the Leader of the Opposition, in relation to the offices of Deputy Governor and Chief Auditor; and
- (b) ~~(b)~~ the Deputy Governor, ~~b—~~
 - (i) ~~(i)~~ acting in accordance with the advice of the Teaching Service Commission in relation to the teaching service; ~~and~~
 - ~~(ii)~~ in relation to all other offices ~~in accordance with the advice of the Public Service Commission; and~~
 - ~~(ii)~~ ~~(iii)~~, acting in accordance with the advice of the Public Service Commission; and
 - ~~(iii)~~ ~~(iii)~~ acting in accordance with the advice of any Service Commission appointed pursuant to section 110(1)(h) ~~103(1)(h) of this Constitution;~~

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

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

(3) ~~(3)~~ If the Teaching Service Commission, ~~the Police Service Commission, or~~ the Public Service Commission, or any Service Commission appointed pursuant to section 110(1)(h) ~~103(1)(h)~~, having reconsidered its original advice under subsection (2) ~~(2)~~, substitutes for it different advice, subsection (2) ~~(2)~~ shall apply to that different advice as it applies to the original advice.

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

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

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

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

~~(8) (8) The Deputy [Regulations made by the~~ Governor, acting after consultation with the Teaching Service Commission, the Police Service Commission, in his or the Public Service Commission ~~her~~ discretion, may, by regulations published in the Gazette, delegate provide for the delegation to any ~~member of the Commission or any public officer or class of other~~ public officer, to such extent and

^a— Wording taken with amendment from section 92 of the VI Constitution, amended to reflect the division of responsibilities for appointment to the public service, the police service, and the teaching service, between the Governor and the Deputy Governor as recommended by paragraphs 147–152 of the 2006 Report.

^b— As recommended by paragraphs 151 and 165 of the 2006 Report.

^e— The question has been asked if the meaning of the phrase “Her Majesty’s service” is clear. Can it be further clarified?

subject to such conditions as may be prescribed in the regulations, of any of the powers conferred on the Deputy Governor by subsection (1)(b) and (2) vested in.

~~(8)(9)~~ Where the Governor, acting in his or her discretion, determines that the exercise of the powers conferred on the Deputy Governor by subsection (1) to make appointments to public offices and to remove or exercise disciplinary control over persons holding or acting in such offices; and except in so far as regulations made under this subsection otherwise provide, any power or delegated to another public officer pursuant to subsection (8) by such regulations would prejudice Her Majesty's service, the Governor shall give directions as to the exercise of those powers to the Deputy Governor or, as the case may be exercised by any person, the other public officer to whom it is powers have been delegated without reference to the Teaching Service Commission, the Police Service Commission or the Public Service Commission, and the Deputy Governor or, as the case may be, the other public officer shall comply with those directions. (a)

~~(9)(10)~~ ~~(9)~~ The Premier may from time to time request a report from the Teaching Service Commission, the ~~Police Service Commission, or the~~ Public Service Commission or a Service Commission about the functioning of the teaching service, ~~the police service,~~ or the public service.

~~(10)(11)~~ ~~(10)~~ This section does not apply to any office to which section 98 ~~96 of this Constitution~~ or 103 applies. b

~~(11)(12)~~ ~~(11)~~ ~~In the event~~ If a Service Commission is appointed pursuant to section 110(1)(h) ~~103(1)(h) of this Constitution, the provisions of,~~ this section shall apply equally to such Commission.

Pensions: Applicability of pensions law

~~51.54.~~ ~~(1)50.~~ ~~(1)~~ The law to be applied with respect to any pension benefits that were granted to any officer in respect of the service of that officer in a public office, before the commencement of this Constitution, shall be the law that was in force at the date on which those benefits were granted or any law in force at a later date that is not less favourable to that person.

(2) ~~(2)~~ The law to be applied with respect to any pension benefits (not being benefits to which subsection (1) ~~(1) of this section~~ applies) shall be the law in force on the date on which the period of service commenced—

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

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

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

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

Pensions, etc., charged on revenues of Anguilla

~~52.55.51.~~ All pension benefits shall (except to the extent that they are by law charged upon and duly paid out of some other fund) be a charge on the Consolidated Fund.

(a) Subsections proposed by UK, based on Montserrat Constitution section 84(3) and (4). Under consideration by Anguilla.

b— Additional subsections (2) to (10) taken with amendment from section 92 of the VI Constitution.

Grant and withholding of ~~pensions~~pension, etc.

~~53.56.~~—(1)~~52.~~—(1) The power to grant any award under any pensions law in force in Anguilla (other than an award to which, under that law, the person to whom it is payable is entitled as of right), and, in accordance with any provisions in that behalf contained in any such law, to withhold, reduce in amount or suspend any award payable under any such law is hereby vested in the Governor, acting in his or her discretion.

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

PART 6 ~~CHAPTER 6~~ HOUSE OF ASSEMBLY THE LEGISLATURE

Composition of legislature and power to make laws^a

~~54.57.~~—(1)~~53.~~—(1) There shall be a Legislature of Anguilla which shall consist of Her Majesty and a House of Assembly.

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

(3) ~~(3)~~—The Assembly shall consist of a Speaker elected as provided in section 74~~69 of this Constitution,~~ not less than eleven~~11~~ elected members, and two non-voting ex officio members, namely the Attorney-General and the Deputy Governor.

(4) ~~(4)~~—A law made under section 66~~subsection~~ (2) may alter the number of elected members of the Assembly, provided that the number of elected members shall be not less than eleven~~11~~; but no such law shall come into force,—

(a) ~~(a)~~—unless, where the law provides for an alteration in the number of electoral districts referred to in section 72~~66 of this Constitution, a Bill, a bill~~ providing for the altered number of electoral districts and their boundaries to take account of the altered number of elected members has been passed following a report by an Electoral District Boundaries Commission established under section 93~~electoral district boundaries commission; and; and~~

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

(5) ~~(5)~~—For its enactment a Bill~~bill~~ for a law made in pursuance of subsection (4)~~(2) of this section~~ shall require the support of two-thirds of the elected members of the Assembly.

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

Qualifications for elected membership^(b)

~~55.58.54.~~—Subject to ~~the provisions of the next following~~ section ~~59,~~ a person shall be qualified to be elected as a member of the Assembly if, and shall not be qualified to be so elected unless, he or she is an Anguillian ~~of twenty-one, is aged 21~~ years or upwards who is registered as a voter in an electoral district in Anguilla, and either—

^a—Adapted from section 63 of the VI Constitution. This version more clearly establishes that the House consists of 9 district representatives and 4 representatives elected at large.

^b—Retains the present qualifications of section 36 as recommended by paragraphs 82, 83 and 84 of the 2006 Report. (b)
Under consideration by Anguilla.

~~(a)~~ [was born in Anguilla and is domiciled there at the date of his or her nomination for election; ~~or~~

(a) ~~(b)~~ [and has resided in Anguilla for a period of not less than three years immediately before the date of his or her nomination for election](a); or

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

Disqualifications for elected membership

~~56.59.~~ (1) ~~55. (1)~~ No person shall be qualified to be elected as a member of the Assembly who, ~~—~~

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

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

Declaration by candidates for election to Assembly

~~57.60.~~ (1) ~~56. (1)~~ Each candidate for election to the Assembly shall, on the date of his or her nomination for election, make a written declaration to the Supervisor of Elections that he or she is qualified for election under section 58~~54~~ and that no disqualification mentioned in section 59~~55~~ ~~of this Constitution~~ applies to him or her.

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

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

(a) Original proposal by Constitutional and Electoral Reform Committee is under further consideration by Anguilla.

(b) Under further consideration by Anguilla in general.

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

(d) The question whether the word “insane” is correct and whether more up to date terminology can be used is under consideration by Anguilla.

e— As recommended by paragraph 90 of the 2006 Report. (e) Under consideration by Anguilla. UK suggests that inspiration could be sought from s.62(1)(e) and (2) of the Cayman Islands Constitution, s.66(1)(d) and (2) of the BVI Constitution, s.49(1)(e), (g) and (2) of the Turks and Caicos Islands Constitution or s.52(1)(f) and (2) of the Montserrat Constitution.

f— Wording taken from section 49(f) of the TCI Constitution.

g— Wording taken from section 50 of the TCI Constitution.

(h) Although not discussed during the negotiations, the UK suggests allowing five working days.

Tenure of office of members of Assembly

~~58.61.57.~~ The seat of an elected member of the Assembly shall become vacant, —

- (a) ~~(a)~~ upon a dissolution of the Assembly;
- (b) ~~(b)~~ if, without prior notice to the Speaker, ~~a~~ he or she is absent from three consecutive meetings of the Assembly;
- (c) ~~(c)~~ if he or she ceases to be resident in Anguilla;
- (d) ~~(d)~~ if he or she resigns his or her seat by writing under his or her hand addressed to the Governor;
- (e) ~~(e)~~ if any of the circumstances arise that, if he or she were not a member of the Assembly, would cause him or her to be disqualified for election ~~theretoto it~~ by virtue of any of paragraphs (a), (b), (c) ~~(a), (b), (c), (d), (e),~~ (e) or (f) ~~(f)~~ of section 59(1) ~~55 of this Constitution;~~
- (f) ~~(f)~~ in the event of the receipt by the Speaker of any recall petition presented to him or her in accordance with ~~the provisions of~~ any Act regulating the recall procedure and signed to the satisfaction of the Speaker by at least two-thirds of the number of persons voting ~~at in~~ the last election for ~~that~~ the electoral district; ~~b in question;~~
- (g) ~~(g)~~ if he or she fails to file his or her declaration of interests as required by section 105 ~~98 of this Constitution;~~ or
- (h) ~~(h)~~ in the circumstances specified in ~~the next following~~ section (2).

Vacation of seat on sentence and suspension

(2) ~~58. (1)~~ Subject to ~~the provisions of~~ this section, if an elected ~~Member~~ member is convicted by a court of law in any country of [an offence of dishonesty or immorality;] ~~(c)~~, he or she shall forthwith cease to perform his or her functions as a member of the Assembly, and his or her seat in the Assembly shall become vacant at the expiration of a period of thirty ~~30~~ days thereafter; ~~d~~

~~59.62. Provided that but~~ the Speaker may, at the request of the member, from time to time extend that period for thirty ~~30~~ days to enable the member to pursue any appeal in respect of his or her conviction or sentence, so however that extensions of time exceeding in the aggregate ~~three hundred and thirty~~ 30 days shall not be given without the approval of the Assembly signified by resolution.

(1) ~~(2)~~ If at any time before the member vacates his or her seat he or she is granted a free pardon or his or her conviction is set aside, [or his sentence is reduced to a term of imprisonment of less than twelve ~~12~~ months or a punishment other than imprisonment is substituted;] ~~(e)~~ his or her seat in the Assembly shall not become vacant under ~~the provisions of the last foregoing~~ subsection (2) and he or she may again perform his or her functions as a member of the Assembly.

(2) ~~(3)~~ If at any time a member of the Assembly is charged with an [offence of dishonesty or immorality] ~~(f)~~ he or she shall be suspended from the Assembly and, where applicable, from any ministerial responsibilities until such time as he or she is either acquitted or convicted.

~~a~~ — The previous provision for the Governor to receive notice dates back to the period when the Commissioner/Governor chaired meetings of the Assembly.

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

~~(c)~~ Under consideration by Anguilla. This will ultimately be consistent with the outcome of discussions on section 59.

~~d~~ — Conviction of an offence of dishonesty or immorality replaces conviction and sentence for a term exceeding 12 months as recommended by paragraph 92 of the 2006 Recommendations.

~~(e)~~ Under consideration by Anguilla. This will ultimately be consistent with the outcome of discussions on section 59.

~~(f)~~ Under consideration by Anguilla. This will ultimately be consistent with the outcome of discussions on section 59.

Temporary members of Assembly

~~60.63.~~—(1) ~~59. (1)~~ Whenever an ex-officio member of the Assembly is by reason of his or her illness or absence from Anguilla or for any other reason incapable of performing the functions of his or her office, the Governor, acting in his or her discretion, may, by instrument under the public seal, appoint any public officer to be ~~temporarily~~ a temporary member of the Assembly in his or her place.

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

- (a) ~~(a)~~ shall hold his or her seat in the Assembly during Her Majesty's pleasure; and
- (b) ~~(b)~~ shall vacate his or her seat when he or she is informed by the Governor that the member on account of whose incapacity he or she was appointed is again able to perform his or her functions as a member of the Assembly.

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

Leader of the Opposition^a

~~61.64.~~—(1) ~~60. (1)~~ Subject to ~~the provisions of~~ this section, the Governor may appoint a Leader of the Opposition.

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

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

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

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

- (a) ~~(a)~~ if for any reason other than a dissolution of the Assembly the holder ~~thereof~~ of it ceases to be a member of the Assembly; ~~or~~

(b) (b) when the Assembly first meets after a general election;

~~(b)~~ (c) if the holder thereof is appointed to the Cabinet; or

(d) (5) if the holder of it resigns it by writing under his or her hand addressed to the Governor.

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

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

(7) [If there are no members of the Assembly in opposition to the Government and therefore no Leader of the Opposition is appointed—

^a—The present provision in section 40A of the 1982 Constitution, amended in accordance with the recommendation at paragraph 94 of the 2006 Report.

- (a) the requirement to consult the Leader of the Opposition in sections [31(5)](a), 53(1)(a), 107, 117 and 131 does not apply;
- (b) the Governor may, acting in his or her discretion, make the appointments referred to in sections 97(1)(c), 101(1)(c), 102(1)(d) and (3), and 1(1)(a) that would otherwise have been made acting on the advice of the Leader of the Opposition; and
- (c) the Chair of the Public Accounts Committee established under section 132 shall be the person expert in public finance appointed by the Governor under section 132(1)(b).](b)

Power to provide for a referendum

~~62.65.~~—(1)~~61. (1)~~ A law enacted by the AssemblyLegislature may make provision to hold a referendum amongstamong persons registered as voters in accordance with section 69~~65 of this Constitution~~, on a matter or matters of national importance, when so resolved by the majority of the elected members of the Assembly; but the question of whether Anguilla should seek any amendment to this Constitution that may result in its independence shall be deemed to be a matter of national importance, and shall require a two-thirds majority of those voting.

(2) ~~(2)~~ [Subject to this Constitution, a referendum under this section shall be binding on the Government of Anguilla and the Assembly if assented to by more than 50 per centtwo-thirds of persons voting in the referendum.](d)

People-initiated referendums

~~63.66.~~—(1)~~62. (1)~~ Without prejudice to section 65~~76 of this Constitution~~, a law enacted by the AssemblyLegislature shall make provision to hold a referendum amongstamong persons registered as voters in accordance with section 69~~65 of this Constitution~~ on a matter or matters of national importance that do not contravene any part of the fundamental rights provisions or any other part of this Constitution.

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

- (a) ~~(a)~~ there shall be presented to the Cabinet a petition signed by not less ~~than~~that 25 per cent of persons registered as voters in accordance with section 69~~65 of this Constitution~~;
- (b) ~~(b)~~ the Cabinet shall settle the wording of a referendum question or questions within a reasonable time period as prescribed by law; and
- (c) ~~(c)~~ the Cabinet shall make a determination on~~determine~~ the date the referendum shall be held in a manner prescribed by law.

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

Determination of questions as to membership of Assembly

~~64.67.~~—(1)~~63. (1)~~ Any question whether a person has been validly appointed as a temporary member of the Assembly, or whether a temporary member of the Assembly has vacated his or her seat ~~therein, in it~~, shall be determined by the Governor acting in his or her discretion.

(a) This section is objected to by the UK.

(b) Although not discussed during the negotiations, the UK proposes to discuss with Anguilla whether to make specific provision in case there are no opposition members in the House of Assembly. If it is decided to address this point, the UK has also made this proposal for how to do so.

e—Wording taken from section 69 of the Cayman Islands Constitution.

(d) Under consideration by Anguilla.

e—Wording taken from section 70 of the Cayman Islands Constitution.

(f) Under consideration by Anguilla.

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

(2) ~~(2)~~ Any question whether a person has been validly elected as a member of the Assembly, or whether an elected member of the Assembly has vacated his or her seat in it or is required by virtue of section 61(2) seat therein to cease to perform his or her functions as a member, shall be determined by the High Court, whose decision shall be final and not subject to any appeal.

(3) ~~(3)(a)~~ An application to the High Court for the determination of any question whether a person has been validly elected as a member of the Assembly may be made by —

- (a) ~~(i)~~ a person who voted or had the right to vote at the election to which the application relates;
- (b) ~~(ii)~~ a person claiming to have had the right to be returned at such election;
- (c) ~~(iii)~~ a person alleging himself or herself to have been a candidate at such election; or
- (d) ~~(iv)~~ the Attorney-General.

(4) ~~(b)~~ An application to the High Court for the determination of any question whether an elected member of the Assembly has vacated his or her seat ~~therein it~~ or is required by virtue of section 61(2) ~~58 of this Constitution~~ to cease to perform his or her functions as a member may be made by —

- (a) ~~(i)~~ any elected member of the Assembly; or
- (b) ~~(ii)~~ the Attorney-General.

(5) ~~(e)~~ If any application referred to in paragraph (a) or (b) of this subsection (3) or (4) is made by a person other than the Attorney-General, the Attorney-General may intervene and may then appear or be represented in the proceedings.

Penalty for sitting or voting in Assembly when unqualified^a

~~65.68.~~ ~~(1) 64. (1)~~ Any person who sits or votes in the Assembly after it has been held by the High Court that he or she is not entitled to do so shall be liable to a penalty established from time to time by ~~a~~ law.

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

Qualification of voters — ~~Subsection (1) is still under review in relation to residence requirements.~~

~~66.69.~~ ~~(1) 65. (1)~~ ~~(Subject to subsections (2) and (4) the next following subsection),~~ a person shall be qualified to be registered as a voter in an electoral district and in the single electoral district if he or she is of the age of ~~eighteen~~ 18 years ~~and/or~~ upwards and —

- (a) ~~(a)~~ is an Anguillian born in Anguilla and is domiciled there at the qualifying date; or
- (b) ~~(i) (b) (i)~~ is an Anguillian who has resided in Anguilla for a period of not less than ~~twelve~~ 12 months immediately before the qualifying date and is domiciled there at that date, and is the lawful spouse, widow ~~of~~ widower, or the son or daughter or the spouse of such son or daughter of a person who was born in Anguilla; or
- (ii) ~~(ii)~~ is an Anguillian who is domiciled in Anguilla and has resided there for a period of at least ~~5~~ five years immediately before the qualifying date; and
- (c) ~~(e)~~ is at the qualifying date resident in the electoral district in which he or she claims to be registered. ~~(b)~~

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

(3) ~~(3)~~ In this section “qualifying date” means such date as may be appointed by or under any law as the date with reference to which the qualifications of persons for registration as voters, for the purpose of the election of members of the ~~House of~~ Assembly, are to be ascertained.

^a — As recommended by paragraphs 97–100 of the 2006 Report.
^(b) This subsection is still under consideration by Anguilla.

~~(4)~~(4) In this section and section 69(7)~~65A~~, “single electoral district” means the single electoral district ~~provided for established~~ by ~~legislation enacted under~~ section 72(2)(a)~~66(2)~~.

~~(5)~~(4) (2) No person shall be qualified to be registered as a voter who, ~~on the qualifying date—~~

- (a) ~~(a)~~ is under sentence of death imposed on him or her by a court of law in any country or is under a sentence of imprisonment (by whatever name called) exceeding ~~twelve~~12 months imposed on him or her by ~~such~~ a court of law in any country or substituted by competent authority for some other sentence imposed on him or her by such a court, provided that the acts constituting the offence for which such sentence was imposed would, if committed in Anguilla, have constituted an offence under the law of Anguilla;
- (b) ~~(b)~~ is a person certified to be insane~~(a)~~ or otherwise adjudged to be of unsound mind under any law in force in Anguilla; or
- (c) ~~(c)~~ is disqualified for registration as a voter by any law in force in Anguilla relating to offences connected with elections.

~~(6)~~(5) (3) For the purposes of ~~paragraph (a) of the preceding~~ subsection ~~(4)(a)~~,—

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

~~(7)~~(6) (4) Within six months after the coming into effect~~force~~ of this Constitution, and at such times thereafter as the Governor may by Proclamation direct, ~~b~~ a new List of Voters qualified under this Constitution shall be prepared by an enumeration process to be provided for in a law governing the registration of voters, and thereupon the existing List of Voters shall become void. ~~Thereafter;~~ thereafter, the List of Voters shall be constantly updated by a process of continuous registration of qualified new voters. ~~e~~

Right to vote at elections

~~(7)~~

~~67,70,65A~~. (1) Any person who is registered as a voter in an electoral district and the single electoral district shall, while so registered, be entitled to vote at any election for those districts unless he or she is prohibited from so voting by any law in force in Anguilla—
force in Anguilla—

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

(a) The question whether the word “insane” is correct and whether more up to date terminology can be used is under consideration by Anguilla.

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

c— This provision is designed to authorise preparation of a new List of Voters who are qualified under the new test of “ordinary residence” in Anguilla.

Laws as to elections

~~68.71.~~ (1) ~~66. (1).~~ Subject to ~~the provisions of~~ this Constitution, the Assembly ~~Legislature~~ may provide^a for the election of members of the Assembly, including (without prejudice to the generality of the foregoing power) the following matters, ~~that is to say, —~~

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

~~(h)~~

~~(2) Notwithstanding anything in this Constitution, the [The Legislature may] shall enact legislative law providing for—~~

- ~~(a) Anguilla to be a single electoral district, in addition to the single member electoral districts into which Anguilla is divided;~~
- ~~(2) (b) the number the regulation of members to be returned to the House of Assembly in elections in the single electoral district; campaign financing.] (c)~~
- ~~(c) registered voters to have the right to vote in the single electoral district in addition to their right to vote in a single member electoral district.~~
- ~~(3) Subject to subsection (4), no legislation enacted under subsection (2) shall come into force before the dissolution of the House of Assembly next following its enactment.~~
- ~~(4) Provisions of any legislation enacted under subsection (2) which concern the registration of voters and other preparations for elections may be brought into force before the dissolution of the House of Assembly.~~

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

^b During the October 2016 public consultations, there was widespread agreement on the need for the new Constitution to provide for a fixed date for general elections.

^c UK proposal. Under consideration by Anguilla.

Elected members^a

~~69.72.~~—(1)~~67. (1)~~ The elected members of the Assembly shall be persons qualified for election in accordance with this Constitution.

- (2) ~~(2)~~ Subject to section 57(4)~~53(3) of this Constitution,~~ for the purposes of elections, Anguilla—
- (a) ~~(a)~~ shall be a single electoral district and shall return not less than four members to the Assembly; and
 - (b) ~~(b)~~ shall also be divided into not less than seven electoral districts in such manner as may be provided by or under any law for the time being in force in Anguilla, and each such district shall return one member to the Assembly.

PART 7 CHAPTER 7

POWERS AND PROCEDURE IN THE HOUSE OF ASSEMBLY^b

Standing Orders and committees

~~70.73.~~—(1)~~68. (1)~~ Subject to this Constitution, the Assembly may from time to time make, amend and revoke Standing Orders for the regulation and orderly conduct of its own proceedings and the dispatch of business, and for the passing, intituling and numbering of Bills~~bills~~ and for their presentation to the Governor for assent.^e

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

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

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

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

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

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

(8) ~~(8)~~ Standing Orders may also establish one or more other standing committees of the Assembly, each of which may be charged with responsibility for monitoring the conduct of business of the Government of Anguilla for which responsibility has been assigned to a Minister under section 41~~39 of this Constitution.~~

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

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

^e The previous provision for the Governor to approve Standing Orders is deleted, since, as the Governor no longer presides as Speaker of the Assembly, it is not appropriate for the Governor to have a say in the Standing Orders of a House of Assembly.

Presiding in Assembly

~~74.~~ ~~(1)~~ ~~(69)~~ ~~(1)~~ The Speaker or, in his or her absence, the Deputy Speaker or, if they are both absent, a member of the Assembly elected by the Assembly for that sitting shall preside at each sitting of the Assembly.

~~(10)~~ ~~(2)~~ When the Assembly first meets after a general election, or after the office of Speaker has fallen vacant for any reason other than a dissolution of the Assembly, and before it proceeds to the dispatch of any other business, the Assembly shall elect a person to be Speaker of the Assembly.

~~(11)~~ ~~(3)~~ ~~(2)~~ The Speaker shall be elected from among persons who are qualified for election to the Assembly but who are not members of the Cabinet.

~~(12)~~ ~~(4)~~ ~~(3)~~ [When the Assembly first meets after a general election and before it proceeds to the ~~dispatch~~ despatch of any other business except the election of the Speaker, it shall elect a ~~member~~ Deputy Speaker from among the elected members of the Assembly other than ~~an elected member to be Deputy Speaker of the Assembly~~ a Cabinet member; and if the office of Deputy Speaker falls vacant for any other reason ~~other~~ than a dissolution of the Assembly, the Assembly shall, as soon as convenient, elect another ~~such~~ member to that office.

~~(13)~~ ~~(5)~~ ~~(4)~~ A person ~~shall~~ must vacate the office of Speaker or Deputy Speaker, ~~—~~

- (a) ~~(a)~~ on dissolution of the Assembly;
- (b) ~~(b)~~ if ~~he~~ that person resigns ~~his~~ the office by written notice to the Governor;
- (c) ~~(c)~~ if a motion for ~~his~~ that person's removal from office receives in the Assembly the affirmative votes of two-thirds of all ~~the~~ members thereof;
- (d) ~~(d)~~ if, being a member of the Assembly, ~~he~~ that person ceases to be a member for any reason other than a dissolution of the Assembly or if, by virtue of section 61(2) ~~58 of this Constitution, he, that person~~ is required to cease to perform ~~his~~ the functions ~~as of~~ a member;
 - ~~(e)~~ in the case of the Speaker,
- (e) ~~(i)~~ if ~~he~~ that person becomes a member of the Cabinet; ~~or~~
- (f) ~~(ii)~~ if, in the case of a Speaker who is not being a member of the Assembly, if any circumstances arise that would cause ~~him~~ the Speaker to be disqualified for election as a member of the Assembly by virtue of section 59(1) ~~55(1) of this Constitution.~~ (a)

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

~~(14)~~ ~~(6)~~ ~~(6)~~ References in subsection (1) ~~(5) of this section~~ to circumstances in which the Speaker or Deputy Speaker is absent include references to circumstances in which the office of Speaker or Deputy Speaker is vacant.

Assembly may transact business notwithstanding vacancies

~~71, 75, 70.~~ The Assembly shall not be disqualified for the transaction of business by reason of any vacancy in ~~the~~ its membership ~~thereof~~ (including any vacancy not filled when the Assembly is first constituted or is reconstituted at any time) and any proceedings ~~therein~~ in it shall be valid notwithstanding that some person who was not entitled to do so sat or voted in the Assembly or otherwise took part in those proceedings.

(a) Although not discussed during the negotiations, as announced in the House of Assembly on the 25 September (and as requested by the Government of Anguilla with the agreement of the Opposition), it is intended that this section of the existing Constitution will be updated at the November Privy Council meeting to amend the category of persons eligible to hold the office of Deputy Speaker. The effect will be that the office of Deputy Speaker can be held by elected members of the Assembly other than members of the Executive Council (renamed the Cabinet in this revised Constitution). Subsections (4) and (5) reflect this approach.

Quorum

~~72.76.~~—(1)~~71. (1)~~ If at any sitting of the Assembly a quorum is not present and any member of the Assembly who is present objects on that account to the transaction of business and, after such interval as may be prescribed in the Standing Orders of the Assembly, the person presiding at the sitting ascertains that a quorum is still not present, he or she shall adjourn the Assembly.

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

Voting

~~73.77.~~—(1)~~72. (1)~~ Save as otherwise provided in this Constitution, all questions proposed for decision in the Assembly shall be determined by a majority of the votes of the members present and voting.

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

Summoning of persons to assist Assembly

~~74.78.~~—(1)~~73. (1)~~ The Speaker or other person presiding may, when in his or her opinion the business before the Assembly makes it desirable, summon any person to a meeting of the Assembly or to any committee of the Assembly notwithstanding that that person is not a member of the Assembly.^a

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

Introduction of ~~Bills~~ bills

~~75.79.~~—(1)~~74. (1)~~ Subject to ~~the provisions of~~ this Constitution and ~~of~~ any Standing Orders of the Assembly, any member may introduce any Bill or propose any motion for debate in, or may present any petition to, the Assembly, and the same shall be debated and disposed of according to the Standing Orders of the Assembly.

(2) ~~(2)~~ Except on the recommendation of the Minister of Finance,^b the Assembly shall not,—

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

[Governor's legislative reserved power](c)

80.—(1) [If the Governor considers, acting in his or her discretion, that the enactment of legislation is necessary or desirable—

^a—As recommended by paragraph 125 of the 2006 Report.

^b—As recommended by paragraph 128 of the 2006 Report. Taken with amendment from section 78(2) of the VI Constitution.

^(c) The Governor's reserved legislative power remains under consideration by the UK and Anguilla. Following the first round of discussions, the UK has reflected on this power and proposes a revised version of the reserved legislative power in the current

(a) with respect to or in the interests of any matter for which he or she is responsible under section 44; or

(b) to ensure that sufficient funds have been appropriated, within four months of the commencement of each financial year, for the effective operation of committees of the House of Assembly, the courts, the Attorney General's Chambers, and each institution protecting good governance.^(a)

but, after consultation with the Premier, it appears to the Governor that the Cabinet is unwilling to support the introduction into the Legislative Assembly of a bill for the purpose or that the Assembly is unlikely to pass a bill introduced into it for the purpose, the Governor may, with the prior approval of a Secretary of State, cause a bill for the purpose to be published in the Gazette and may (notwithstanding that the bill has not been passed by the Assembly) assent to it on behalf of Her Majesty; but the bill shall be so published for at least 21 days prior to assent unless the Governor certifies by writing under his or her hand that the matter is too urgent to permit such delay in the giving of assent and so informs a Secretary of State.

(2) If any member of the Assembly so desires, he or she may, within 30 days of the publication of a bill under subsection (1), submit to the Governor a statement in writing of his or her comments on such publication and the Governor shall forward such statement, or a copy of it, as soon as is practicable to a Secretary of State.]

Assent to Bills

76.81.—(1)~~75. (1)~~ A bill shall not become a law until,—

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

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

- (a) ~~(a)~~ to be inconsistent with any obligation of Her Majesty or of Her Majesty's Government in the United Kingdom towards any other state or power or any international organisation;
- (b) ~~(b)~~ to be likely to prejudice the Royal Prerogative; ~~or prerogative~~;
- (c) ~~(c)~~ to be in any way repugnant to or inconsistent with this Constitution~~;~~^b;
- (d) to determine or regulate the privileges, immunities or powers of the Assembly or of its members;
- (e) to affect any matter for which the Governor is responsible under section 44; or
- (f) to affect the integrity or independence of the public service or of the administration of justice.

Return of Bills by Governore

77.82.—(1)~~76. (1)~~ The Governor may return to the Assembly any Bill presented to him or her for assent, transmitting therewith any amendment which he or she may recommend, and the Assembly shall deal with such recommendation.

Constitution for discussion in the next round. This is based on the reserved legislative power found in s.81 of the Cayman Islands Constitution.

(a) This has been proposed as a means of breaking any deadlock resulting from the operation of section 131(7) if sufficient funds have not been appropriated within 4 months of the commencement of the financial year.

^b—Wording taken from section 79(2) of the VI Constitution.

^e—As recommended by paragraph 132 of the 2006 Report.

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

(3) Subject to section 81(2)~~(3)~~ The, the Governor shall assent to the ~~Bill~~bill on its being returned to him or her ~~for his~~ assent a second time, with or without the amendment having been accepted.

[Disallowance of laws]

83.—(1) Any law assented to by the Governor may be disallowed by Her Majesty through a Secretary of State; but no law shall be disallowed until the expiration of a period notified by a Secretary of State to the Governor, who shall advise the Speaker of that period, in order to give the Assembly an opportunity to reconsider the law in question.(a)

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

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

OR

[Pre-legislative controls]

83.—(1) Except with the consent of the Governor, acting in his or her discretion, signified by the Premier, the Assembly shall not proceed upon any bill (including any amendment to a bill) that, in the opinion of the Governor, acting in his or her discretion, signified as aforesaid, concerns a matter for which the Governor is responsible under section 44(1).

(2) Every bill shall be published in the Gazette, and the Assembly shall not proceed upon any bill until the expiration of six weeks after the date on which the bill was so published, unless the Premier certifies by writing under his or her hand that consideration of the bill is too urgent to permit such a delay.](c)

Standing Committees^d

78.84.—(1)~~77. (1)~~—The Assembly shall establish at least two Standing Committees of the ~~House~~Assembly, one of which shall be the Appropriations Committee established ~~under~~by section 130~~121 of this Constitution~~ and the other the Public Accounts Committee established by section 132~~123 of this Constitution~~, and each of which shall be charged with responsibility for monitoring the conduct of business of the Government of Anguilla for which responsibility has been assigned to a Minister ~~or Ministers~~ under section 41~~39 of this Constitution~~.

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

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

(4) ~~(4)~~—Each Standing Committee shall have power,=

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

(a) Subsection (1) based on BVI Constitution section 80(1).

(b) 1978 c. 30.

(c) Alternative versions of section 83, proposed by UK. Under consideration by Anguilla.

d—Adapted from section 64 of the TCI Constitution.

- (b) ~~(b)~~ subject to any law or Standing Orders, to require any person so summoned to testify on oath ~~[or affirmation]~~(a) and provide information about the conduct of business of the Government of Anguilla by the Minister, ministry or department concerned; and
 - (c) ~~(c)~~ to report upon its activities to the Assembly.
- (5) ~~(5)~~ For the purposes of effectively performing its functions a standing or other committee may summon any person the committee believes may assist the committee in the performance of its functions and the committee shall have the powers, rights and privileges of the Supreme High Court for:—
- (a) ~~(a)~~ enforcing the attendance of witnesses and examining them on oath, affirmation or otherwise;
 - (b) ~~(b)~~ compelling the production of documents; and
 - (c) ~~(c)~~ issuing a commission or request to examine a witness abroad.
- (6) ~~(6)~~ Each Standing Committee shall be presided over by a member of the Assembly in opposition to the Government of Anguilla, save as otherwise provided in this Constitution.
- (7) ~~(7)~~ The Assembly shall publish reports submitted to it under subsection (4)~~(4)~~.
- (8) ~~(8)~~ Subject to the foregoing provisions of this section, Standing Orders shall provide for the composition and functions of, and proceedings and conduct of business before, Standing Committees.

Oath of allegiance

~~79.85.78.~~ Except for the purpose of enabling this section to be complied with, no ex-officio or elected member of the Assembly shall be permitted to take part in its proceedings until he or she has made before the Speaker an oath or affirmation of allegiance in the form set out in ~~the Schedule to 1;~~ but the election of a Speaker and Deputy Speaker of the Constitution: Assembly may take place before the members of it have made such oath or affirmation.

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

Privileges of Assembly and members

~~80.86.79.~~ A law enacted under this Constitution may determine and regulate the privileges, immunities and powers of the Assembly and its members, but no such privileges, immunities ~~or~~ and powers shall exceed those of the Commons' House of Parliament Commons of the United Kingdom or of the members ~~thereof.~~ of it.

Sessions

~~81.87.~~ ~~(1)~~ ~~80. (1)~~ Subject to ~~the provisions of~~ this Constitution, the sessions of the Assembly shall be held at such places and begin at such times as the Governor, acting in accordance with the advice of the Premier, may from time to time by Proclamation appoint.

(2) ~~(2)~~ There shall be at least one session of the Assembly in every year, ~~so however that~~ and there shall be an interval of less than ~~twelve~~ 12 months between the last sitting in one session and the first sitting in the next session.

Prorogation and dissolution

~~82.88.~~ ~~(1)~~ ~~81. (1)~~ The Governor, acting in accordance with the advice of the Premier, may at any time, by Proclamation published in the Gazette, prorogue the Assembly.

(a) Although not discussed during the negotiations, the UK makes this proposal for consistency with the rest of Constitution.

b The present Act is the House of Assembly (Powers and Privileges) Act, RSA c H015, which will need to be revised and updated on the adoption of this Constitution.

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

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

General elections

~~83.89.~~ ~~(1) 82. (1)~~ After the coming into effect of this Constitution, there shall be ~~a~~ general election ~~on the first Monday after the 5th fifth anniversary of the last general election.~~^a

(2) ~~(2)~~ The polling day for each subsequent general election ~~is to shall~~ be the first Monday after the ~~5th fifth~~ anniversary of the previous general election.

(3) ~~(3)~~ The Governor, acting ~~in accordance with~~ the advice of the Premier, may by order made by statutory instrument provide that the polling day for a general election in a specified calendar year ~~is to shall~~ be later than the day determined under ~~subsections (1) subsection~~ (1) or (2) ~~(2),~~ but not more than two months later.

(4) ~~(4)~~ A statutory instrument containing an order under subsection (3) ~~(3)~~ shall not be made unless a draft has been laid before and approved by ~~a~~ resolution of the ~~House of~~ Assembly.

(5) ~~(5)~~ The draft laid before the ~~House of~~ Assembly containing an order under subsection (3) ~~(3)~~ must be accompanied by a statement setting out the Premier's reasons for proposing the change in the polling day.

~~Where under section 39(1) (6) An early general election is to take place if or 88(2) the House of Assembly passes a motion of no confidence is dissolved before the five-year period referred to in section 88(3) the government.~~

(6) ~~(7)~~ ~~If a general election is to take place as provided for by subsection (6),~~ the polling day for the ~~ensuing general~~ election ~~is to shall~~ be the day appointed by the Governor ~~under a law governing elections, acting in his or her discretion.~~

PART 8 CHAPTER 8

THE JUDICATURE^b

Eastern Caribbean Supreme Court

~~84.90.83.~~ The Supreme Court Order 1967 ~~(c)~~ shall continue to apply to Anguilla as it applied immediately before the commencement of this Constitution, and accordingly the High Court and the Court of Appeal of the Eastern Caribbean Supreme Court shall continue to have jurisdiction in Anguilla.

Subordinate courts and tribunals

~~85.91.84.~~ There shall be such courts and tribunals in and for Anguilla subordinate to the Eastern Caribbean Supreme Court, and such courts and tribunals shall have such jurisdiction and powers, as may be prescribed by any law for the time being in force in Anguilla.

^a This provision creates a fixed date for elections, strongly favoured by the public during the October 2016 consultations over the draft new Constitution. The wording is taken from the UK Act.

^b This provision taken from Chapter 6 of the VI Constitution.

^(c) S.I. 1967/223, amended by S.I. 1983/1108, 2000/3060.

Appeals to Her Majesty in Council~~a~~

~~86.92.~~—(1)~~85. (1)~~ In the following cases, an appeal shall lie from decisions of the High Court to the Court of Appeal and thence to Her Majesty in Council as of right,~~that is to say, —~~

- (a) ~~(a)~~ final decisions, in any civil or criminal proceedings, on questions as to the interpretation of this Constitution;
- (b) ~~(b)~~ final decisions in any civil proceedings where the matter in dispute on the appeal is of the value of EC\$~~2,500~~~~[10,000]~~~~(b)~~ or upwards or where the appeal involves, directly or indirectly, a claim to or a question respecting property or a right of the value of EC\$~~2,500~~~~[10,000]~~ or upwards;
- (c) ~~(c)~~ final decisions in proceedings under section 22~~18 of this Constitution;~~;
- (d) ~~(d)~~ final decisions in proceedings for dissolution or nullity of marriage; and
- (e) ~~(e)~~ in such other cases as may be prescribed by a law enacted by the Assembly~~Legislature~~.

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

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

~~Subsections (1) and (2) are subject to sections 60(3) and 67(2)(3). The foregoing provisions of this section shall be subject to the provisions of section 63(2) of this Constitution.~~

~~(3) (4).~~

~~(3) (4)~~ In this section the references to final decisions of a court do not include any determination ~~thereof by the court~~ that any application made ~~theretoto it~~ is merely frivolous or vexatious.

~~(4) (5) (5)~~ Nothing in this section shall affect any right of Her Majesty to grant special leave to appeal to Her Majesty in Council from the decision of any court in any civil or criminal matter.

PART 9 CHAPTER 9

INSTITUTIONS PROTECTING GOOD GOVERNANCE

NOTE: ~~[The number and types of commissions and commissioners have not yet been agreed.]~~

Electoral District Boundary Commission~~e~~

~~87.93.~~—(1)~~86. (1)~~ An Electoral District Boundary Commission (in this section referred to as a “Commission”) shall be appointed from time to time at such time as the Governor, acting after consultation with the Premier and the Leader of the Opposition, may determine; but a Commission shall be appointed not later than ~~ten~~^d years after the last Commission submitted its report under section ~~(6) 87 of this Constitution.~~

(2) ~~(2)~~ A Commission shall consist of ~~—~~

- (a) ~~(a)~~ a Chairman ~~Chair~~, being a person who is an Anguillian, appointed by the Governor, acting in his or her discretion;~~;~~

~~a — Adapted from section 78 of Mrs Richardson’s draft. This is removed from the previous “Miscellaneous” Chapter.~~

~~(b) UK proposal, under consideration by Anguilla.~~

~~c — As recommended by paragraph 77 of the 2006 Report. Taken with amendment from section 57 of the TCI Constitution.~~

~~d — Altered to “ten” from “four” in the original to reflect the intention that the Commission should review the boundaries after every ten-year census.~~

- (b) ~~(b)~~ a member appointed by the Governor, acting in accordance with the advice of the Premier; and
 - (c) a member appointed by the Governor, acting in accordance with the advice of the Leader of the Opposition.
 - ~~(e)(a) (e) a member appointed by the Governor, acting in accordance with the advice of the Leader of the Opposition.~~
- (3) ~~(3)~~ A person shall not be qualified to be appointed as a member of ~~the~~ Commission if he or she is a member of the Assembly or a public officer other than the holder of a judicial office.
- (4) ~~(4)~~ A quorum for meetings of ~~the~~ Commission shall be two.
- (5) ~~(5)~~ The ~~Chairman~~ Chair or other member of a Commission shall vacate his or her office, ~~—~~
- (a) ~~(a)~~ on the day following the submission of the report of the Commission under section ~~87 of this Constitution~~ 94;
 - (b) ~~(b)~~ if any circumstances arise that, if he or she were not a member, would cause him or her to be disqualified for appointment as such; or
 - (c) ~~(c)~~ if the Governor, acting in his or her discretion, directs that he or she shall be removed from office for inability to discharge the functions of his or her office (whether arising from infirmity of body or mind or from any other cause) or for misbehaviour.

~~Review and alteration of electoral district boundaries~~ ~~Review and alteration of electoral district boundaries~~

~~—~~ (6)^a

~~88.94.87. (1)~~ An Electoral District Boundary Commission shall, as soon as practicable after its appointment under section ~~93~~ 86 of this Constitution, review the electoral district boundaries into which Anguilla is divided and, taking into account the changes or proposed changes, if any, in the number of electoral districts, shall submit a report to the Governor and the Assembly containing its recommendations for any changes in the number and boundaries of the electoral districts.

(1) ~~(2)~~ In determining its recommendations under this section, a Commission shall seek to ensure that electoral districts (apart from the single electoral district established by section 72(2)(a)) contain, so far as is reasonably practicable, approximately equal numbers of persons qualified to be registered as voters under section ~~69~~ 65 of this Constitution and based on any last previous national census findings or report; ~~but a Commission may depart from this principle to such extent as it considers expedient in order to take into account,~~

- ~~(a) the density of population and, in particular, the need to ensure adequate representation of sparsely populated areas;~~
- ~~(b) the means of communication;~~
- ~~(c) geographical features.~~

(2) ~~(3)~~ As soon as may be after a Commission has submitted a report under this section, the Governor shall cause a ~~Bill~~ bill to be introduced by the Attorney-General into the Assembly for giving effect, whether with or without modifications, to the recommendations contained in the report; and such a ~~Bill~~ bill ~~—~~

- (a) may contain provisions for any matters which are incidental to or consequential upon its principal provisions; and
- (b) shall include a provision for the coming into force of the measure when enacted for the determination of the electoral districts to which it relates upon the next dissolution of the Assembly after enactment.

^a — Wording taken from section 61 of the TCI Constitution, 2011.

(3) ~~(4)~~—Where any Bill introduced under this section proposes to give effect to the recommendations with modifications, there shall be laid before the Assembly at the same time a statement of the reasons for the modifications.

Public Service Commission^a

~~89.95.~~—(1) ~~88. (1)~~ There shall be in and for Anguilla a Public Service Commission which shall consist of five members, of whom, —

- (a) ~~(a)~~ three shall be appointed by the Deputy Governor, ~~b~~ acting in his or her discretion; and
- (b) ~~(b)~~ two shall be appointed by the Deputy Governor, acting after consultation with the public service staff associations, other than those representing teachers or the police.

(2) ~~(2)~~ A quorum shall be four members.

(3) ~~(3)~~ The Public Service Commission shall advise the Deputy Governor on all matters of appointment, disciplining and remuneration of public servants/officers in the government of Anguilla. ~~e~~

Teaching Service Commission^d

~~90.96.~~—(1) ~~89. (1)~~ There shall be in and for Anguilla a Teaching Service Commission which shall consist of three members, of whom, —

- (a) ~~(a)~~ two shall be appointed by the Deputy Governor, acting in his or her discretion; and
- (b) ~~(b)~~ one shall be appointed by the Deputy Governor, acting after consultation with the Anguilla Teachers Union.

(2) ~~(2)~~ A quorum shall be two members.

(3) ~~(3)~~ The Teaching Service Commission shall advise the Deputy Governor on all matters of appointment, disciplining and remuneration of teachers in the government of Anguilla.

Police Service Commission^e

~~91.97.~~—(1) ~~90. (1)~~ There shall be in and for Anguilla a Police Service Commission which shall consist of five members, of whom, —

- (a) ~~(a)~~ two shall be appointed by the Deputy Governor, acting in his or her discretion;
- (b) ~~(b)~~ one shall be appointed by the Deputy Governor, acting in accordance with the advice of the Premier;
- (c) ~~(c)~~ one shall be appointed by the Deputy Governor, acting in accordance with the advice of the Leader of the Opposition; and
- (d) ~~(d)~~ one shall be appointed by the Deputy Governor, acting after consultation with the Police Welfare Association.

(2) ~~(2)~~ A quorum shall be four members.

^a—As recommended by paragraphs 60 and 141–146 of the 2006 Report. Adapted from section 91 of the VI Constitution, to exclude consultation with teachers and the police who are otherwise represented by their own Commissions).

^b—The original wording of the VI draft amended to reflect the reality that the Deputy Governor is the effective head of the public service.

^c—Here and in sections 89 and 90, the concluding words, “and shall act in accordance with any Act, and shall have such functions and jurisdiction as may be prescribed by or under any such Act” deleted as being a duplication of the provision in section 103.

^d—Wording taken from section 93 of the VI Constitution.

^e—As recommended by paragraph 63 of the 2006 Report. Wording taken from section 96 of the VI Constitution. During the public consultations in October 2016 there were recommendations that there be provision for a chaplain for the police service, as the chaplain served as a mediator and counsellor for the service. While the Committee consider the appointment of a chaplain a positive idea, it is not considered that this is a matter for the Constitution, but for the Police Act. ~~(e)~~ A proposal for a combined Police, Fire and Prison Service Commission is under consideration by Anguilla.

(3) ~~(3)~~ Subject to section 98~~91 of this Constitution,~~ the Police Service Commission shall advise the Deputy Governor on all matters of appointment, disciplining and remuneration of police officers in the government of Anguilla.

Power to appoint, etc., to offices in the Police Service*

~~92,98.~~ ~~(1)~~~~91. (1)~~ Power to make appointments to offices in the Police Service up to the rank of Inspector and to remove and to exercise disciplinary control over persons holding or acting in such offices shall vest in the Deputy Governor, acting in accordance with the advice of the Police Service Commission ~~appointed in accordance with section 90 of this Constitution;~~ but the Deputy Governor may, acting in his or her discretion, may act otherwise than in accordance with that advice if he or she determines that compliance with that advice would prejudice Her Majesty's service.

~~(2)~~ ~~(2)~~ Power to make appointments to offices in the Police Service of a rank superior to Inspector and to remove and to exercise disciplinary control over persons holding or acting in such offices shall vest in the Governor, acting in accordance with the advice of the Police Service Commission; but the Governor, acting in his or her discretion, may act otherwise than in accordance with that advice if he or she determines that compliance with that advice would prejudice Her Majesty's service.

~~(2)~~~~(3)~~ Where the Police Service Commission advises that any person should be appointed to an office in the Police Service of a rank superior to Inspector, that advice shall require the approval of the National Security Commission before being submitted to the Governor; but the Governor, acting in his or her discretion, may act without the approval of the National Security Commission if he or she determines that to do otherwise would prejudice Her Majesty's service.

~~(3)~~~~(4)~~ ~~(3)~~ Before exercising the powers vested in the Deputy Governor by subsection (1)~~(4)~~, or in the Governor by subsection (2)~~(2)~~, ~~the Governor or,~~ the Deputy Governor or the Governor, as the case may be, may, acting in his or her discretion, once refer the advice of the Police Service Commission back to the Commission for reconsideration by it.

~~(4)~~~~(5)~~ ~~(4)~~ If the Police Service Commission, having reconsidered its original advice under subsection (4)~~(3)~~, substitutes for it different advice, subsection (4)~~(3)~~ shall apply to that different advice as it applies to the original advice.

~~(5)~~~~(6)~~ ~~(5)~~ The ~~Deputy~~ Governor, acting after consultation with the Police Service Commission, may, by regulations published in the Gazette, delegate to any member of the Commission or any public officer or class of public officer, to such extent and subject to such conditions as may be prescribed in the regulations, any of the powers vested in the Deputy Governor to make appointments to offices in the Police Service up to the rank of Inspector and to remove or exercise disciplinary control over persons holding or acting in such offices; and except in so far as regulations made under this subsection otherwise provide, any power delegated by such regulations may be exercised by any person to whom it is delegated without reference to the Police Service Commission.

(7) Where the Governor, acting in his or her discretion, determines that the exercise of the powers conferred on the Deputy Governor by subsection (1) or delegated to another person under subsection (6) would prejudice Her Majesty's service, the Governor shall give directions as to the exercise of those powers to the Deputy Governor or, as the case may be, the other person to whom powers have been delegated, and the Deputy Governor or, as the case may be, the other person shall comply with those directions.(b)

National Security Commission

~~93,99.~~ ~~(1)~~~~92. (1)~~ There shall be for Anguilla a National Security Commission which shall consist of:—

- (a) ~~(a)~~ the Governor, as ~~Chairman~~Chair;

*— Wording taken from section 97 of the VI Constitution.

(b) Based on Montserrat Constitution section 84(4). Compare section 53(9) above, under consideration by Anguilla.

e— As recommended by paragraph 179 of the 2006 Report. Wording taken from section 57 of the VI Constitution, and amended to include the Deputy Governor.

- (b) ~~(b)~~ the Deputy Governor;
- (c) ~~(c)~~ the Premier;
- (d) ~~(d)~~ one other Minister appointed in writing by the Governor, acting in accordance with the advice of the Premier;
- (e) ~~(e)~~ the Attorney-General, ex officio; and
- (f) ~~(f)~~ the Commissioner of Police, ex officio.

(2) ~~(2)~~ A Minister appointed under subsection (1)(d)~~(1)(e)~~ shall vacate his or her seat on the National Security Commission if —

- (a) ~~(a)~~ his seat or her office as Minister becomes vacant under section 39~~37 of this Constitution;~~
~~or; or~~
- (b) ~~(b)~~ the Governor so directs in writing, acting in accordance with the advice of the Premier.

(3) ~~(3)~~ The National Security Commission shall advise the Governor on matters relating to internal security and the Governor shall be obliged to act in accordance with the advice of the Commission, unless he or she considers that giving effect to the advice would adversely affect Her Majesty's interest (whether in respect of the United Kingdom or Anguilla); and where the Governor has acted otherwise than in accordance with the advice of the Commission, he or she shall report to the Commission at its next meeting.

(4) ~~(4)~~ The Commissioner of Police shall —

- (a) ~~(a)~~ provide regular briefings to the National Security Commission on matters of internal security, including the Police Service;
- (b) ~~(b)~~ have responsibility for the day to day operation of the Police Service and shall report regularly on such matters to the Governor; and
- (c) ~~(c)~~ inform the Premier of any significant security developments in Anguilla, including the occurrence of any significant criminal activity.

(5) ~~(5)~~ The National Security Commission may invite any person or summon any public officer to attend and participate in, or provide briefings to, the Commission on the areas of their work bearing on internal security.

(6) ~~(6)~~ The Governor, acting in his or her discretion, may summon a meeting of the National Security Commission whenever he or she considers it desirable to do so, and the Governor shall summon such a meeting whenever the Premier so requests.

(7) ~~(7)~~ Subject to this section, the National Security Commission may regulate its own procedure.

(8) ~~(8)~~ The Cabinet Secretary shall be the Secretary to the National Security Commission.

(9) ~~(9)~~ The quorum for meetings of the Commission shall be four.

Financial Services Commission^a

~~94.100.—(1)93.—~~ There shall be for Anguilla a Financial Services Commission, which shall be established as a body corporate with perpetual succession and a corporate seal and which shall be responsible for the regulation of the international financial services industry^b and having have such specific functions and powers and a board to be appointed by the Governor, all as may be ~~set out~~provided in a law enacted by the Legislature.

(2) In making appointments to the board the Governor shall act after consultation with the Cabinet, but the Governor shall not be bound by any advice given by the Cabinet.

^a—As recommended by paragraph 58 of the 2006 Report.

^b—As recommended by paragraph 56 of the 2006 Report.

Appointments Commission^(a)

95.101.—(1)~~94. (1)~~ There shall be in and for Anguilla an Appointments Commission which shall consist of three members, of whom –

- (a) ~~(a)~~ one shall be appointed by the Governor, acting in his or her discretion;
 - (b) ~~(b)~~ one shall be appointed by the Governor, acting in accordance with the advice of the Premier; and
 - (c) ~~(c)~~ one shall be appointed by the Governor, acting in accordance with the advice of the Leader of the Opposition; and.
- (2) ~~(2)~~ A quorum shall be two members.
- (3) ~~(3)~~ No person may be appointed to any government-controlled board, committee or commission not subject to its own separate legislation save with the approval of the Appointments Commission.
- (4) ~~(4)~~ The Appointments Commission shall act in accordance with any Act, and shall have such functions and jurisdiction as may be prescribed by or under any such Act.

Judicial and Legal Services Commission^b

96.102.—(1)~~95. (1)~~ There shall be in and for Anguilla a Judicial and Legal Services Commission which shall consist of, —

- (a) ~~(a)~~ the Chief Justice, who shall be Chairman~~the Chair~~;
 - (b) ~~(b)~~ another judge of the Court of Appeal or the High Court nominated by the Chief Justice after consultation with the Governor;
 - (c) ~~(c)~~ the Chairman~~Chair~~ of the Public Service Commission; and
 - (d) ~~(d)~~ two other members appointed by the Governor, acting in accordance with the advice of the Premier and the Leader of the Opposition who will each nominate one member, at least one of whom shall be a legal practitioner.
- (2) ~~(2)~~ For the purpose of subsection (1)(d)~~(1)(d)~~, the Premier and the Leader of the Opposition shall alternate in nominating a legal practitioner, with the Premier making the first such nomination upon the commencement of this Constitution, provided that; but such nomination shall not be construed as precluding the nomination of two legal practitioners under subsection (1)(d)~~(1)(d)~~.
- (3) ~~(3)~~ If the office of a member of the Judicial and Legal Services Commission appointed under subsection (1)(d)~~(1)(d)~~ becomes vacant or if such ~~a~~ member is for any reason unable to perform the functions of that office, the Governor, acting in accordance with the advice of the Premier or the Leader of the Opposition, as the case may be, may appoint another suitably qualified person to that office for the unexpired term of the previous holder of the office or until the previous holder of the office is able to resume his or her functions.
- (4) ~~(4)~~ Any decision of the Judicial and Legal Services Commission shall require the concurrence of not less than three members of the Commission, and the Commission shall take its decisions in such form and manner as it may determine.

Power to appoint, etc., to legal offices^e

97.103.—(1)~~96. (1)~~ Power to make appointments to the offices to which this section applies, and to remove and to exercise disciplinary control over persons holding or acting in such offices, shall vest in the Governor, acting in accordance with the advice of the Judicial and Legal Services Commission ~~appointed under section 90 of this Constitution~~; but the Governor, acting in his or her discretion, may act otherwise than in accordance with that advice if he or she determines that compliance with that advice would prejudice Her Majesty's service.

(a) This section under reconsideration by Anguilla

^b—The additional subsections taken from section 94 of the VI Constitution.

^e—Wording taken from section 95 of the VI Constitution.

(2) ~~(2)~~ Before exercising the powers vested in the Governor by subsection (1)~~(1)~~, the Governor may, acting in his or her discretion, once refer the advice of the Judicial and Legal Services Commission back to the Commission for reconsideration by it.

(3) ~~(3)~~ If the Judicial and Legal Services Commission, having reconsidered its original advice under subsection (2)~~(2)~~, substitutes for it different advice, subsection (2)~~(2)~~ shall apply to that different advice as it applies to the original advice.

(4) ~~(4)~~ This section applies to the offices of:—

- (a) ~~(a)~~ Attorney-General;
- (b) ~~(b)~~ Director of Public Prosecutions;
- (c) ~~(c)~~ Chief Magistrate; and (a) Magistrate;
- (d) ~~(d)~~ any office in the public service of the Attorney-General's Chambers or of any Registrar or other officer of the High Court who is required to possess legal qualifications;

and to such other offices in the public service, for appointment to which persons are required to possess legal qualifications, as may be prescribed by any law or Government policy for the time being in force in Anguilla.

(5) ~~(5)~~ No person shall be appointed to the office of Attorney-General unless he or she is qualified to be admitted in Anguilla as a legal practitioner and has had at least ten years' practical experience as a legal practitioner.

(6) ~~(6)~~ No person shall be appointed to the office of Attorney-General unless he or she is an Anguillian unless, in the opinion of the Judicial and Legal Services Commission, there is no Anguillian who is suitably qualified and able and willing to be so appointed.

(7) ~~(7)~~ No person shall be appointed to the office of Director of Public Prosecutions unless he or she is qualified to be admitted in Anguilla as a legal practitioner and has had at least seven years' practical experience as a legal practitioner.

(8) ~~(8)~~ A person qualified under subsection (7)~~(7)~~ shall be appointed to act in the office of Director of Public Prosecutions whenever the office falls vacant and until a person is appointed substantively to that office, or whenever the holder of that office is for any reason unable to perform his or her functions (including by reason of suspension under subsection (10)~~(10)~~).

(9) ~~(9)~~ A person holding the office of Attorney-General, Director of Public Prosecutions, Chief Magistrate or Magistrate, for such period as may be specified in the instrument by which he or she is appointed, may only be removed from office for inability to discharge the functions of his or her office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour.

(10) ~~(10)~~ Where the issue of the removal of the Director of Public Prosecutions from office has been referred to the Judicial and Legal Services Commission, the Governor shall suspend the Director of Public Prosecutions from performing the functions of his or her office pending the outcome of the referral.

Integrity Commission^b

98.104.—(1) ~~97. (1) The~~ There shall be an Integrity Commission for Anguilla which shall consist of:—

- (a) ~~(a) a Chairman~~ Chair, being a person qualified for judicial office, appointed by the Governor, acting in his or her discretion;
- (b) ~~(b)~~ a member appointed by the Governor, acting in accordance with the advice of the Premier; and
- ~~(c) (a) (c) a member appointed by the Governor, acting in accordance with the advice of the Leader of the Opposition.~~

(a) Although not discussed during the negotiations, UK proposes the inclusion of this reference to the Chief Magistrate.

^b In accordance generally with paragraph 135 of the 2006 Report. The wording is taken from sections 102 and 103 of the TCI Constitution. Note that subsection (5) of the TCI precedent is omitted as being a duplication of section 103.

(c) a member appointed by the Governor, acting in accordance with the advice of the Leader of the Opposition.

(2) ~~(2)~~ A person shall not be qualified to be appointed as a member of the Commission if he or she is a member of the Assembly or a public officer other than the holder of a judicial office.

(3) ~~(3)~~ The primary responsibility of the Integrity Commission shall be to promote integrity, honesty and good faith in public life in Anguilla.^a

(4) ~~(4)~~ The Integrity Commission shall, —

(a) ~~(a)~~ have and exercise the functions conferred on it by sections 39, ~~59, 37, 55, 98,~~ 105 and 137 ~~126 of this Constitution;~~

(b) ~~(b)~~ formulate and publish, after public consultation in Anguilla, a Code of Conduct for Persons in Public Life, keep the Code under review and amend or replace it as it considers necessary or desirable, and, in accordance with any law, investigate any alleged failures to abide by the Code by persons subject to it, either in response to a complaint or on its own initiative;

(c) ~~(c)~~ contribute to public education about integrity in public life; and

(d) ~~(d)~~ have and exercise such other functions, for the purpose of fulfilling its primary responsibility under subsection (3) ~~(2);~~, including the imposition of penalties, as may be conferred on it by law.

(5) ~~(5)~~ A quorum for meetings of the Commission shall be two.

(6) ~~(6)~~ The Integrity Commission shall make an annual report to the Assembly about its activities, and shall send a copy of each report to the Governor who shall ensure that any such report is published and made widely available.

Registration of ~~interests~~ Interests

~~99, 105.~~ (1) ~~98. (1)~~ There shall be for Anguilla a Register of Interests, which shall be a public document published on a government website and otherwise made generally available to public scrutiny and maintained by the Integrity Commission.

(2) ~~(2)~~ It shall be the duty of any person to whom this section applies to declare to the Integrity Commission, for entry in the Register of Interests, such interests, assets, income and liabilities of that person, or of any ~~other~~ person connected with him or her, as may be prescribed by law.

(3) ~~(3)~~ A person shall make a declaration under subsection (2) ~~(2)~~ on assuming the functions of his or her office and at such intervals thereafter (being no longer than ~~twelve~~ 12 months) as may be prescribed by law.

(4) ~~(4)~~ This section applies immediately upon the ~~coming into effect~~ commencement of this Constitution to all members of the Assembly (including Ministers) and subsequently to the holders of such other offices (except that of Governor) as may be prescribed by law.

(5) ~~(5)~~ A law made by the Assembly Legislature shall make provision for giving effect to this section, including the sanctions ~~which that~~ may be imposed for failure to comply with, or the making of false statements in purported compliance with, subsections (2) ~~(2)~~ and (3) ~~(3);~~.

Anguillian Status Commission

~~100, 106.~~ (1) ~~99. (1)~~ There shall be an Anguillian Status Commission (~~hereinafter in this section referred to as “the Commission”;~~) for the composition and purpose of granting Anguillian status under this Constitution with such functions of which shall, subject to the provisions of this section, and membership as may be prescribed by in a law.

(2) ~~(2)~~ For the purposes of this Constitution, a person ~~shall be regarded as is~~ an Anguillian if that person —

^a — The Public Service Integrity Board’s functions will become redundant. The PSIB Act will need to be repealed.

^b — Adapted from section 112 of the VI Constitution

- (a) ~~(a)~~ — is a person born or adopted in or outside Anguilla and who has at least one parent or grandparent who was born or adopted in Anguilla, where such parent or grandparent is regarded as being an Anguillian by virtue of this Constitution or is/was regarded as an Anguillian or(a) as belonging to Anguilla by virtue of any previous Constitution;
- (b) ~~(b)~~ — is/was regarded as an Anguillian(b) or as belonging to Anguilla by virtue of ~~this Constitution (as in force before the commencement of the Anguilla Constitution (Amendment) Order 2019)~~ or of any previous Constitution;
- (c) ~~(c)~~ — is a British overseas territories citizen having been born or adopted in Anguilla or having become such a citizen by virtue of registration or naturalisation while resident in Anguilla;
- (d) ~~(d)~~ — is a British overseas territories citizen domiciled in Anguilla and whose father or mother by virtue of registration or naturalisation while resident in Anguilla became a British Dependent Territories citizen at the commencement of the British Nationality Act 1981(c) (or would have done so but for his or her death) or so became such a citizen after the commencement of that Act;
- (e) ~~(e)~~ — has been granted Anguillian status by the Commission on the basis that that person—
 - (i) ~~(i)~~ — is a great-grandchild of a person born in Anguilla and who is regarded as being an Anguillian by virtue of this Constitution or is/was regarded [as being an Anguillian or](d) as belonging to Anguilla by virtue of any previous Constitution, where the great-grandchild has resided in Anguilla for a continuous period of at least five years; ~~or~~
 - (ii) ~~(ii)~~ — has resided in Anguilla for a continuous period of at least 15 years; ~~or~~
 - (iii) ~~(iii)~~ — is born in Anguilla and is a child under the age of 18 years of a person referred to in subparagraph (ii)(ii); ~~or~~
 - (iv) ~~(iv)~~ — is born outside Anguilla and is a child under the age of 18 years of a person referred to in subparagraph (ii)(ii), where the child has resided in Anguilla for a continuous period of at least three years; ~~or~~
 - (v) ~~(v)~~ — is born in Anguilla and does not qualify under any of the foregoing provisions of this subsection, but has resided in Anguilla for a continuous period of at least ten years; or
 - (vi) ~~(vi)~~ — is married to an Anguillian and has been so married for at least five years.

(3) ~~(3)~~ The Commission may withdraw the status of Anguillian from any person referred to in subsection (2)(e)(ii)~~(2)(e)(ii), (2)(e)(iv), (2)(e)(iv) or (2)(e)(vi)~~(2)(e)(vi)~~(2)(e)(vi)~~ if that person is convicted of an indictable offence by a court ~~of~~in Anguilla.

(4) ~~(4)~~ A withdrawal of Anguillian status under subsection (3)~~(3)~~ does not prejudice the status of an Anguillian who obtained such status by virtue of a relationship to the person whose status has been withdrawn.

~~(5)~~~~(5)~~ Any reference in this section to a period of residence in Anguilla is to be construed as a reference to residing lawfully in Anguilla and not in breach of Anguilla's immigration laws and will be calculated in a manner determined by law.

(a) UK proposal. This change was not discussed during the negotiations, but is desirable to reflect the fact that the term "Anguillian" was introduced into the Constitution in 2019.

(b) UK proposal. This change was not discussed during the negotiations, but is desirable to reflect the fact that the term "Anguillian" was introduced into the Constitution in 2019.

(c) 1981 c.61.

(d) UK proposal. This change was not discussed during the negotiations, but is desirable to reflect the fact that the term "Anguillian" was introduced into the Constitution in 2019.

Advisory Commission on the Prerogative of Mercy^a

~~101,107.~~ ~~(1)100. (1)~~ There shall be in and for Anguilla an Advisory Commission on the Prerogative of Mercy (in this section referred to as “the Commission”), which shall consist of the Attorney-General, the Director of Medical Services, ~~the Leader of the Opposition or their representative~~ and four members appointed by the Governor, acting ~~on the advice of~~ after consultation with the ~~Premier and the Leader of the Cabinet~~ Premier and the Leader of the Opposition, for the purpose of advising the Governor on the exercise of his or her power of pardon under subsection (4)~~(3) of this section.~~

~~(2)~~ ~~(2)~~ The Commission shall not be summoned except on the authority of the Governor, acting in his or her discretion; and the Governor shall preside at all meetings of the Committee.

~~(2)~~ ~~(3)~~ A quorum for meetings of the Commission shall be three members, of whom one shall be the Attorney-General.

~~(3)~~ ~~(4)~~ ~~(3)~~ Acting ~~on the advice of~~ after consultation with the Commission, ~~the~~ the Governor may, in Her Majesty’s name and on Her Majesty’s behalf, ~~—~~

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

Commissions of Inquiry^e

~~102,108.~~ ~~(1)101.~~ The Governor, acting ~~on the advice of~~ after consultation with the ~~advice of~~ Cabinet, may appoint one or more Commissioners selected by him or her to inquire into the conduct and management of any public body, the conduct of any public official, or into any matter that is, in his or her opinion, of public importance ~~and/or~~ as may be prescribed by ~~a~~ law.^d

~~(2)~~ The Governor shall not be bound by any advice given to him or her by the Cabinet under subsection (1).

General provisions regarding Commissions^e

~~103,109.~~ ~~(1)102. (1)~~ Subject to section 131~~122~~ and to any contrary specific provisions contained in this Constitution, the following general provisions apply to Commissions established by this Constitution.

(2) ~~(2)~~ In the exercise of its functions a Commission shall not be subject to the direction or control of any other person or authority.

(3) ~~(3)~~ A Commission may, with the consent of the Governor acting in his or her discretion, confer powers ~~and/or~~ impose duties on any public officer or on any authority of the Government of Anguilla for the purpose of the discharge of its functions.

(4) ~~(4)~~ A Commission may act notwithstanding any vacancy in its membership (including any vacancy not filled when appointments of members are first made) and its proceedings shall be valid notwithstanding that some person who was not entitled to do so took part in them; but any decision of a Commission shall require the concurrence of not less than two members of the Commission.

^a Adapted from section 44 of the VI Constitution. See the recommendation at paragraph 163 of the 2006 Report.

^b As recommended by paragraph 163 of the 2006 Report.

^c It is appropriate to entrench in Chapter 9 the power to appoint commissioners of inquiry.

^d There is at present an Act, the Commissions of Inquiry Act RSA c C050, but it is not constitutionally protected.

^e A consolidation of various provisions governing individual Commissions in other BOT Constitutions, made to avoid duplication of the provisions in the case of every Commission.

(5) ~~(5)~~ The Governor, acting after consultation with the Premier, shall appoint one of the members of a Commission to be ~~Chairman~~Chair of the Commission.

(6) ~~(6)~~ No person shall be qualified to be appointed as a member of a Commission if he or she is a member of, or a candidate for election to, the Assembly.

(7) ~~(7)~~ Save as otherwise provided by this Constitution, the office of a member of a Commission shall become vacant, —

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

(8) ~~(8)~~ If the office of a member of a Commission is vacant or a member is for any reason unable to perform the functions of his or her office, the Governor, acting in the manner prescribed for the appointment of that member, may appoint a person who is qualified for appointment as a member of the Commission to act as a member of the Commission, and any person so appointed shall, subject to ~~the provisions of the preceding~~ subsection (7), continue so to act until he or she is notified by the Governor, acting in his or her discretion, that the circumstances giving rise to the appointment have ceased to exist; but in the case of a vacancy in the office of the Chair or the inability of the holder of it to perform his or her functions, the functions of the office of Chair shall be performed by such member of the Commission or person acting as a member as the Governor, acting after consultation with the Premier, may designate.

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

(9) ~~(9)~~ No business shall be transacted at any meeting of a Commission if there is not a quorum present.

(10) ~~(10)~~ Any question for decision at any meeting of a Commission shall be determined by a majority of the votes of the members present and voting; and if on any question the votes are equally divided the ~~Chairman~~Chair shall have and exercise a casting vote.

(11) ~~(11)~~ There shall be charged on the revenues of Anguilla and paid ~~thereout of them~~ to the members of a Commission such emoluments as may be prescribed by any law for the time being in force in Anguilla; but the emoluments of a member of a Commission shall not be reduced during his or her continuance in office.

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

(12) ~~(12)~~ In the exercise of its functions, a Commission may regulate its own procedure.

(13) ~~(13)~~ Each Commission shall report annually to the Assembly on the performance of ~~his office~~its functions.

(14) ~~(14)~~ The Assembly shall within one month of receipt of each annual report publish it in a widely accessible form.

Legislation regarding Commissions^a

~~104.110.~~ ~~(1)~~ ~~103. (1)~~ Subject to ~~the provisions of~~ this Constitution, the ~~Assembly~~ Legislature may by law make provision for ~~—~~

- (a) ~~(a)~~ the composition and membership of a Commission;
- (b) ~~(b)~~ the quorum for meetings of a Commission where not otherwise provided for in this Constitution;
- (c) ~~(c)~~ the functions of a Commission;
- (d) ~~(d)~~ the organisation of ~~the~~ work of a Commission and the manner in which it performs its functions;
- (e) ~~(e)~~ consultation by a Commission with persons or authorities other than its members;
- (f) ~~(f)~~ the protection and privileges of members of a Commission in respect of the performance of their functions and the privilege of communications to and from a Commission and its members in the case of legal proceedings;
- (g) ~~(g)~~ the definition and trial of offences in relation to the functions of a Commission and the imposition of penalties for such offences;
- (h) ~~(h)~~ the amalgamation of two or more Commissions with the full powers of each of the constituent Commissions under this Constitution, in which case if they are service Commissions which are amalgamated the single Commission shall be known as ~~the~~^[a]~~(b)~~ Service Commission and if there is any other amalgamated Commission it shall be known as the Administrative Law Commission;
- (i) ~~(i)~~ conferring on a Commission other related functions, without prejudice to the functions conferred on such Commission by this Constitution; and
- (j) ~~(j)~~ the establishment of a secretariat, the members of which shall be public officers, of a Commission.

(2) ~~(2)~~ In this section “Commission” means the Electoral ~~Districts~~ District Boundary Commission, the Public Service Commission, the Teaching Service Commission, the Police Service Commission, the National Security Commission, the Financial ~~Service~~ Services Commission, the Appointments Commission, the Judicial and Legal ~~Service~~ Services Commission, the Integrity Commission, the Anguillian Status Commission, the Advisory Commission on the Prerogative of Mercy, and a Commission of Inquiry.

Human Rights Commissioner^e

~~105.111.~~ ~~(1)~~ ~~104. (1)~~ There is established a Human Rights Commissioner for Anguilla (in this section referred to as ~~(“~~the Commissioner”)).

(2) ~~(2)~~ The powers and duties of the Commissioner (which shall not derogate from ~~the provisions of~~ this section) shall be such as may be prescribed by law and may include the following ~~—~~

- (a) ~~(a)~~ the receipt and investigation of complaints of breaches or ~~infringement~~ infringements of any right or freedom referred to in Chapter ~~Part~~ 1;
- (b) ~~(b)~~ the provision of a forum for dealing with, and participation of the Commissioner in promoting conciliation with respect to, complaints and disputes concerning any matter relating to Chapter ~~Part~~ 1;
- (c) ~~(c)~~ issuing guidance on ~~procedures~~ procedure for dealing with any complaints of breaches or infringements of rights and freedoms referred to in Chapter ~~Part~~ 1;

^a—Adapted from section 98 of the VI Constitution.

^(b) Although not discussed during the negotiations, the UK proposes amending this to “a”, as there could be more than one amalgamated service commission.

^e—Adapted from section 19 of Mrs Richardson’s draft.

- (d) ~~(d)~~ imparting knowledge to the public with respect to the rights and freedoms referred to in ~~Chapter~~Part 1 or in relation to any international instrument or activity relating to human rights; and
 - (e) ~~(e)~~ preparing and submitting periodically reports concerning ~~his or her~~ activities to the Assembly.
- (3) ~~(3)~~—The power of the Commissioner to deal with any matter under ~~Chapter~~Part 1 shall be exercised only with the agreement or concurrence of the persons concerned therewith.
- (4) ~~(4)~~—Nothing contained in or done pursuant to any law made under subsection (2)~~(2)~~ shall, ~~—~~
- (a) ~~(a)~~ oblige a person to refer any complaint of a breach or infringement of any right or freedom referred to ~~Chapter~~in Part 1 to the Commissioner; or
 - (b) ~~(b)~~ prevent a person from seeking redress directly from the court in relation to any breach or infringement of a right or freedom referred to in ~~Chapter~~Part 1, and the fact that such person had previously sought the assistance of the Commissioner with respect to such breach or infringement shall not be a bar.

Complaints Commissioner^a

~~106.112.105.~~ There shall be a Complaints Commissioner for Anguilla who shall investigate, resolve and report on complaints from persons who believe that they have suffered injustice as a result of maladministration by any public authority in Anguilla.^b

Police Complaints Commissioner^c

~~107.113.106.~~ There shall be a Police Complaints Commissioner for Anguilla who shall oversee the handling of complaints of members of the public against members of the Royal Anguilla Police Service.

Public Procurement Commissioner

~~108.114.~~ ~~(1)~~~~107.~~~~(1)~~ Subject to the rights of innocent third parties no goods, works or services or retention or disposal of public property shall be procured save in accordance with an Act of the ~~Assembly~~Legislature designed to accord with the principles of good governance, accountability, transparency, integrity and value for money.^d

(2) ~~(2)~~—There is established a Public Procurement Commissioner for Anguilla whose duties and responsibilities shall include, ~~—~~

- (a) ~~(a)~~ investigating, on his or her own initiative or upon complaint from any party involved in public procurement or disposal of public property or any member of the public, any alleged or suspected breach of the Act referred to in subsection (1)~~(1) of this section;~~ and
- (b) ~~(b)~~ subject to ~~the provisions of~~ this section, any other duty or function that may be conferred on him or her by the Act referred to in subsection (1)~~(1) of this section.~~

^a— This is the “Ombudsman” provision, as recommended by paragraph 181 of the 2006 Report. The wording is taken from section 110 of the VI Constitution.

^b— “public authority” is a defined term.

^c— By sections 110 and 111 of the VI Constitution, there is a Complaints Commission with such functions and jurisdiction as may be prescribed by law. It is thought preferable to entrench a Police Complaints Commissioner in the Constitution as recommended by paragraph 62 of the 2006 Report.

^d— Wording taken with amendment from the long title and section 6 of the Public Procurement and Disposal of Public Property Act 2015 of Trinidad and Tobago (hereinafter “the Trinidad Act”). The Trinidad Act has been passed, but as of the date of writing has not been brought into effect by the necessary Proclamation.

Freedom of Information Commissioner^a

~~109.115.~~ ~~(1)~~ ~~108. (1)~~ There shall be ~~an independent~~ Freedom of Information Commissioner for Anguilla who shall receive complaints, investigate, decide and report on the compliance of public authorities with the ~~provisions of the~~ Freedom of Information law enacted by the ~~Assembly~~ Legislature.

(2) ~~(2)~~ ~~The~~ That law shall provide for a right of access to all information held by public authorities, for the conditions for the exercise of that right, and for restrictions and exceptions to that right [which may include those] in the interests of the security of Anguilla or the United Kingdom, public safety, public order, public morality or the rights and interests of individuals. ~~(b).~~

(3) ~~(3)~~ ~~In the event that~~ If a report prepared by one of the institutions protecting good ~~government~~ governance is not published contemporaneously with its delivery or within a reasonable time thereafter in a manner designed to give the widest public access to its contents, then the Commissioner shall secure a copy of the report and cause it to be published on an appropriate Anguilla government website.

~~[Supervisor of Elections—Under review to determine whether Electoral Commission is preferable]~~ (d)

~~110.116.~~ ~~(1)~~ ~~109. (1)~~ There shall be a Supervisor of Elections for Anguilla appointed by the Governor, who shall oversee all matters relating to the holding of elections and referendums.

(2) ~~(2)~~ Subject to section 117 ~~110.~~, the Supervisor of Elections shall have such other functions and jurisdiction as may be prescribed by law.

General provisions relating to Commissioners^e

~~111.117.~~ ~~(1)~~ ~~110. (1)~~ Subject to any specific provision made above, the following shall apply to any Commissioner appointed under this Constitution.

(2) ~~(2)~~ A Commissioner shall be appointed for a minimum period of five ~~(5)~~ years by the Governor, acting after consultation with the Premier and the Leader of the Opposition, by instrument under the public seal.

(3) ~~(3)~~ No person shall be qualified to be appointed as a Commissioner if he or she has been within the preceding three years, ~~—~~

- (a) ~~(a)~~ an elected member of the Assembly; or
- (b) ~~(b)~~ the holder of any office in any political party.

(4) ~~(4)~~ The office of a Commissioner shall become vacant, ~~—~~

- (a) ~~(a)~~ at the expiration of the period specified in the instrument by which he or she was appointed;
- (b) ~~(b)~~ if he or she resigns office by writing under his or her hand addressed to the Governor;
- (c) ~~(c)~~ if he or she becomes an elected member of the Assembly or the holder of any office in ~~any~~ a political party; or
- (d) ~~(d)~~ if the Governor, acting in his or her discretion, directs that he or she shall be removed from office for inability to discharge the functions of the office (whether arising from

~~a—Drafted to ensure that all reports from institutions guaranteeing good governance are published contemporaneously with their delivery, and for the Commissioner to enforce such publication.~~

~~(b) Under consideration by Anguilla.~~

~~e—It has been recommended that independence of the Supervisor of Elections from political interference be constitutionally protected.~~

~~(d) This section is still under consideration by Anguilla.~~

~~e—Adapted and consolidated from provisions relating to individual Commissioners in the Constitutions of other BOTs. The question has been raised whether there should not be a minimum qualification (academic, professional, or by experience) for Commissioners.~~

infirmity of body or mind or any other cause) or for misbehaviour, or for contravention of subsection (5).

~~(5)~~ ~~(5)~~ Subject to such exceptions as the Governor, acting in his or her discretion, may authorise by directions in writing, a Commissioner shall not hold any other office of emolument in the public service other than the duties of his or her office.

~~(5)~~ ~~(6)~~ In the exercise of his or her functions, a Commissioner shall not be subject to the direction or control of any other person or authority.

~~(6)~~ ~~(7)~~ ~~(6)~~ Subject to section 131 ~~122 of this Constitution~~, there shall be charged on the revenues of Anguilla and paid ~~thereout~~ out of them to every Commissioner such emoluments as may be prescribed by any law for the time being in force in Anguilla; but the emoluments of a Commissioner shall not be reduced during his or her continuance in office.

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

~~(7)~~ ~~(8)~~ ~~(7)~~ The same person may be appointed by the Governor to fill two or more Commissions offices of Commissioner under this Constitution, in which case he or she shall be known as ~~the~~ a Constitutional Commissioner.

~~(8)~~ ~~(9)~~ ~~(8)~~ Subject to ~~the provisions of~~ this Constitution, the Assembly Legislature may by law make provision for:—

- (a) ~~(a)~~ the functions and jurisdiction of a Commissioner;
- (b) ~~(b)~~ the organisation of the work of a Commissioner and the manner in which he or she performs his or her functions;
- (c) ~~(c)~~ consultation by a Commissioner with other persons or authorities ~~other than its members~~;
- (d) ~~(d)~~ the protection and privileges of a Commissioner in respect of the performance of his or her functions and the privilege of communications to and from a Commissioner in the case of legal proceedings;
- (e) ~~(e)~~ the definition and trial of offences in relation to the functions of a Commissioner and the imposition of penalties for such offences;
- (f) ~~(f)~~ conferring on a Commissioner other related functions, without prejudice to the functions conferred on such Commissioner by this Constitution; and
- (g) ~~(g)~~ the establishment of a secretariat, the members of which shall be public officers, of a Commissioner.

~~(9)~~ ~~(10)~~ ~~(9)~~ Each Commissioner ~~mentioned in sections 104 to 109 of this Constitution~~ shall report annually to the Assembly on the performance of his ~~office~~ or her functions.

~~(10)~~ ~~(11)~~ ~~(10)~~ The Speaker shall within one month of receipt of any report from a Commissioner publish it in a widely accessible form.

~~(11)~~ ~~(12)~~ ~~(11)~~ For the purposes of this section “Commissioner” means the Human Rights Commissioner, the Complaints Commissioner, the Police Complaints Commissioner, the Public Procurement Commissioner, the Freedom of Information Commissioner, and the Supervisor of Elections.

Public assets—~~Still under review.~~(b)

~~112.118.~~ ~~(1)~~ ~~111.~~ ~~(1)~~ Subject to ~~the provisions of~~ any law for the time being in force in Anguilla, the Governor or any person duly authorised by him ~~or her by~~ writing under his or her hand may, in Her Majesty’s name and on Her Majesty’s behalf, make and execute under the public seal grants, leases, charges and dispositions of any significant public asset, including land in excess of a half-acre, and mineral and fishing rights, belonging to Anguilla that may be lawfully dealt with by Her Majesty.

(a) Although not discussed during the negotiations, the UK proposes this amendment so that more than one person can be given multiple commissioner roles. This was not previously clear.

(b) This section is still under consideration by Anguilla. Reformulated proposal by UK.

~~(2) (2) No—~~

- ~~(a) Crown land in excess of ~~one~~ half-acre, ~~or~~;~~
- ~~(b) lease or charge over any such land in Anguilla; ~~or~~~~
- ~~(c) mineral or fishing rights.~~

may be sold, leased, charged, exchanged, or otherwise disposed of or dealt with without a resolution of the Assembly authorising the transaction.^a

(3) The Assembly shall by resolution define what constitutes a “significant public asset” for the purposes of this section.

PART 10 CHAPTER 10

[PUBLIC FINANCE](b)

General principles

119.—(1) The macro-economic and fiscal policies of the Government shall be formulated and conducted for the sustained long-term prosperity of the people of Anguilla.

(2) Public funds shall be managed according to established principles of value for money, affordability and regularity and the interests of long-term financial stability.

(3) The Government shall formulate a framework document (to be called a “Fiscal Framework”) stating the principles of public financial management which sets—

- (a) limits on levels of public debt relative to public revenue;
- (b) limits on debt service costs as a proportion of recurrent public revenue; and
- (c) levels of reserves relative to public expenditure.

(4) Any Fiscal Framework formulated under subsection (3) must be agreed by a Secretary of State in draft before it is adopted by the Government, and the Government shall publish the Fiscal Framework in the Gazette as soon as possible after its adoption.

(5) On the date of publication of the first Fiscal Framework under subsection (4), the Fiscal Responsibility Act(c) shall be repealed.

(6) The Minister of Finance shall report to the Assembly at least every six months on—

- (a) the performance of the Government in implementing the Fiscal Framework; and
- (b) the state of the public finances and the state of the economy of Anguilla.

(7) The Government shall aim towards achieving and maintaining a surplus budget, and where an Appropriation Bill would not return a surplus result the Minister of Finance shall, at the same time as the bill is introduced in the Assembly, lay before the Assembly a statement explaining the reasons for not achieving a surplus.

(8) Where the Government is in breach, or in the opinion of a Secretary of State is in breach or is likely to be in breach, of the Fiscal Framework—

- (a) all Appropriation Bills or any other bill or significant decision relating to the public finances of Anguilla, including proposals for the Government to borrow, must first be agreed by a Secretary of State; and
- (b) the Government shall be required to agree with a Secretary of State a Medium Term Fiscal Plan which includes milestones for meeting key debt ratios and clearly articulated policy measures that will lead the Government to come into compliance with the key debt ratios set out in a Fiscal Framework and agreed by a Secretary of State.

^a— As recommended by paragraph 162 of the 2006 Report.

^(b) This chapter is still under consideration by Anguilla. The version proposed by the Constitutional and Electoral Reform Committee is included here with further changes proposed by UK.

^(c) RSA c.9 of 2013.

(9) In this section “the Government” means the Government of Anguilla.

Taxation

120.—(1) No tax, rate or other levy shall be imposed, and no waiver or variation of any tax, rate or other levy shall be applied, except under the authority of an Act.

(2) Where an Act confers powers on any person or authority to waive or vary a tax, rate or other levy imposed by that Act, that person or authority shall report to the Assembly on the exercise of those powers as often as shall be determined by law but not less than every six months.

Contingent liabilities

121. The Minister of Finance shall ensure that all contingent liabilities of the Government of Anguilla, including pension and healthcare liabilities, are subjected to independent actuarial assessment at least every [three](a) years, and shall report the information provided by any such assessment to the Assembly within two months of receiving it.

Consolidated Fund

122.—(1) There shall continue to be a Consolidated Fund for Anguilla into which shall be paid all revenues or other monies raised or received by and for the purposes of the Government of Anguilla.

(2) The revenues or other monies referred to in subsection (1) shall not include revenues or other monies –

- (a) that are payable by or under an Act into some other fund for a specific purpose; or
- (b) that may, by or under an Act, be retained by the department of government that received them for the purpose of defraying the expenses of that department.

(3) Any sums standing to the credit of the Consolidated Fund may be invested—

- (a) with a bank at call or subject to notice not exceeding 12 months; or
- (b) in an investment authorised by law and approved by the Assembly.

(4) For the avoidance of doubt any investment or deposit made under subsection (3) shall not constitute a withdrawal from the Consolidated Fund.

Withdrawal from Consolidated Fund or other public funds

123.—(1) No monies shall be withdrawn from the Consolidated Fund except—

- (a) to meet expenditure charged on the Consolidated Fund by any law in force in Anguilla; or
- (b) where the issue of those monies has been authorised by an Appropriation Act, or as provided in subsection (3).

(2) No monies shall be withdrawn from any public fund of Anguilla other than the Consolidated Fund unless the issue of those monies has been authorised by law.

(3) If the Minister of Finance is satisfied that the Appropriation Act in respect of any financial year will not come into force by the beginning of that financial year, the Minister may, if so authorised by the Assembly by resolution and subject to subsection (4), authorise the issue of monies from the Consolidated Fund for the purpose of meeting expenditure necessary to carry on the services of the Government of Anguilla until the expiration of four months from the beginning of that financial year or the coming into force of the Appropriation Act, whichever is the earlier.

(4) Any sum issued in any financial year from the Consolidated Fund under subsection (3) in respect of any ongoing service of the Government of Anguilla—

- (a) shall not exceed one third of the amount approved for that service in an Appropriation Act for the previous financial year; and

(a) This is amended from two years in the original Constitutional and Electoral Reform Committee proposal.

(b) shall be set off against the amount provided in respect of that service in the Appropriation Act for that financial year when the Act comes into force.

Financial year estimates

124. At least six weeks before the beginning of each financial year the Minister of Finance shall cause to be prepared and laid before the Assembly—

- (a) estimates of revenue and expenditure of the Government of Anguilla for that financial year; and
- (b) a document setting out targets for revenue and expenditure for the next three financial years, and an assessment of performance against the debt [ratios](a) as set out in the Fiscal Framework,

and the Assembly shall publish those estimates and that document without delay.

Appropriation Bill

125.—(1) The heads of expenditure contained in the estimates, other than expenditure charged on the Consolidated Fund by any law in force in Anguilla, shall be included in a bill, to be known as an Appropriation Bill, which shall be introduced into the Assembly to provide for the issue from the Consolidated Fund of the sums necessary to meet that expenditure and the appropriation of those sums for the purposes specified in the bill.

(2) If in respect of any financial year it is found that the amount appropriated for any purpose under the Appropriation Act is insufficient or that a need has arisen for expenditure for a purpose for which no amount has been appropriated by that Act, a supplementary estimate showing the sums required shall be laid before the Assembly by the Minister of Finance.

(3) The heads of expenditure contained in a supplementary estimate shall be included in a bill, to be known as a Supplementary Appropriation Bill, which shall be introduced into the Assembly to provide for the issue from the Consolidated Fund of the sums specified in the bill.

(4) The Governor, with the prior approval of a Secretary of State, may refuse to assent to any Appropriation Bill or Supplementary Appropriation Bill if in his or her judgement the enactment of that bill would be inconsistent with section 119 or the Fiscal Framework.

Excess expenditure(b)

126.—(1) Where, in exceptional circumstances, at the close of accounts for any financial year it is found that monies have been expended on any expenditure in excess of the amount appropriated for it by an Appropriation Act or a Supplementary Appropriation Act or for a purpose for which no monies have been voted and appropriated, the amount of the excess expended, or not appropriated, as the case may be, shall be included in a statement of expenditure in excess.

(2) The Minister of Finance shall lay every statement of expenditure in excess before the Assembly, which shall refer it to the Public Accounts Committee, and the Minister shall at the same time send a copy of the statement to the Governor.

(3) The Public Accounts Committee shall report to the Assembly on a statement of expenditure in excess referred to it under subsection (2) within six months after the statement is referred to it.

(4) Where on receiving any report of the Public Accounts Committee issued under subsection (3) the Assembly, by means of a resolution, allows the excess or the amount expended but not appropriated to stand charged to public funds, the sum required to meet that excess or such amount as shall be allowed shall be included in a Supplementary Appropriation Bill for appropriation.

(a) The UK suggests changing “debt sustainability limits” to “debt ratios” to ensure consistency of terminology throughout Chapter 10.

(b) New section proposed by UK, based on TCI Constitution section 117.

Contingencies(a)

127.—(1) The Minister of Finance, if he or she is satisfied that there is an urgent and unforeseen need for expenditure for which no provision or insufficient provision has been made by an Appropriation Act or a Supplementary Appropriation Act, may, by a Contingencies Warrant under his or her hand and in anticipation of the grant of an appropriation by the Legislature, authorise an advance from the Consolidated Fund to meet that need and shall forthwith report his or her action to the Cabinet.

(2) No Contingencies Warrant shall be issued by the Minister of Finance without the prior approval of the Governor, acting in his or her discretion, and the Assembly shall be invited to approve the expenditure resulting from any Contingencies Warrant issued by the Minister.

(3) An advance made under subsection (1) shall be subject to any Act and to any restrictions imposed by the Assembly by resolution from time to time.

Power of Government to borrow or lend

128.—(1) Subject to this Constitution, the Government of Anguilla may borrow from any source.

(2) The Government of Anguilla shall not borrow, guarantee or raise a loan on behalf of itself or any other public institution, authority or person except—

(a) as authorised by or under an Act; and

(b) in accordance with the Fiscal Framework and any other borrowing guidelines agreed with Her Majesty's Government in the United Kingdom.

(3) An Act enacted under subsection (2)(a) shall provide—

(a) that the terms and conditions of the loan shall be laid before the Assembly and shall not come into force unless they have been approved by a resolution of the Assembly; and

(b) that any monies received in respect of that loan shall be paid into and form part of the Consolidated Fund or into some other public fund which exists or is created for the purpose of the loan.

(4) The Minister of Finance shall, at such times as the Assembly may determine and at least every six months, cause to be presented to the Assembly such information concerning any loan as is necessary to show—

(a) the extent of the total indebtedness by way of principal and accumulated interest;

(b) the provision made for servicing or repayment of the loan; and

(c) the utilisation and performance of the loan.

(5) Where a Guarantee is given by Her Majesty's Government in the United Kingdom in connection with any borrowing under this section, the Government of Anguilla shall repay the guaranteed borrowing as quickly as possible.

(6) The Governor may, on behalf of the Government of Anguilla, enter into counter-indemnity arrangements with Her Majesty's Government in the United Kingdom in relation to any Guarantee in connection with any borrowing under this section, and shall ensure compliance by the Government of Anguilla with its obligations under any such arrangements.

(7) The Assembly may, by resolution, authorise the Government of Anguilla to enter into an agreement for the giving of a loan or a grant out of any public fund or public account.

(8) An agreement entered into pursuant to subsection (7) shall be laid before the Assembly and shall not come into force unless it has been approved by the Assembly by resolution.

(9) Any resolution passed by the Assembly under subsection (7) or (8) must be compatible with section 119 and the Fiscal Framework.

(a) New section proposed by UK based on TCI Constitution section 118.

(10) For the purposes of this section, “loan” includes any money lent or given to or by the Government of Anguilla on condition of return or repayment and any other form of borrowing or lending in respect of which—

- (a) monies from the Consolidated Fund or any other public fund may be used for payment or repayment; or
- (b) monies from any fund by whatever name called, established for the purpose of payment or repayment whether in whole or in part and whether directly or indirectly, may be used for payment or repayment.

Exercise of functions in Part 10 by Governor

129. In the exercise of any function conferred on the Governor by sections 119 to 128 (inclusive) the Governor shall [act in his or her discretion](a) and shall comply with any instructions that may be given to him or her by a Secretary of State.

Appropriations Committee

130.—(1) There shall be an Appropriations Committee of the Assembly, which shall consist of at least three members of the Assembly appointed by the Speaker from among members who are not Ministers, at least one of whom shall be a member of the Assembly in opposition to the Government of Anguilla.

(2) The Appropriations Committee may co-opt to its membership up to two persons who are not members of the Assembly, either on a continuing basis or for the purpose of a specific enquiry conducted by the Committee, and shall be assisted in its work by the Permanent Secretary, Finance or his or her nominee and permanent Committee staff.

(3) The Appropriations Committee shall have power to compel the production of documents and evidence from Ministers, departments of government and public officers, and shall meet in public.

(4) The Appropriations Committee shall have and exercise the functions conferred on it by this Constitution and such other functions as may be conferred on it by any other law or by Standing Orders.

(5) The Assembly shall publish all reports of the Appropriations Committee without delay.

Provision for and funding of institutions protecting good governance

131.—(1) An institution protecting good governance shall be provided with an office, and with staff and administrative facilities, appropriate to the institution’s responsibilities.

(2) The salaries and allowances of the staff of the institution are charged on and shall be paid out of the Consolidated Fund.

(3) Notwithstanding subsections (1) and (2) the Governor, acting after consultation with the Premier and the Leader of the Opposition, may confer powers and impose duties on any public officer or any authority of the Government of Anguilla for the purpose of the discharge of any of the institution’s functions.

(4) Before 31 August of the preceding year—

- (a) each institution protecting good governance shall submit to the Appropriations Committee a bid for its budget for the following financial year;
- (b) the Appropriations Committee shall scrutinise each bid in public hearings and, having satisfied itself that the bid conforms to the current budget policies of the Government of Anguilla and made any amendments it considers necessary for that purpose, recommend to the Assembly a budget for each institution for that financial year.

(a) This language is additional to the draft proposed by the Constitutional and Electoral Reform Committee, but the UK proposes this addition. Otherwise, section 129 would not add anything to the general duty of the Governor to comply with instructions in s.31(3).

(5) The Assembly may pass or reject a budget recommended to it under subsection (4)(b) but may not amend it.

(6) If the Assembly passes a budget recommended to it under this section, that budget shall form part of the Appropriation Act for that financial year.

(7) If the Assembly rejects a budget recommended to it under subsection (4)(b), the Appropriations Committee shall reconsider the budget in question and, after consulting the institution concerned, recommend a revised budget to the Assembly; and the same procedure shall be followed if the Assembly rejects a revised budget recommended to it.(a)

Public Accounts Committee

132.—(1) There shall be a Public Accounts Committee of the Assembly which shall consist of—

- (a) at least three members of the Assembly appointed by the Speaker from among members who are not Ministers; and
- (b) two persons expert in public finance who are not members of the Assembly, one of whom shall be appointed by the Speaker and one of whom shall be appointed by the Governor, acting in his or her discretion.

(2) The Chair of the Public Accounts Committee shall be the Leader of the Opposition.

(3) A person appointed under subsection (1)(b) shall cease to be a member of the Public Accounts Committee—

- (a) at the expiration of the period for which he or she was appointed;
- (b) if he or she becomes a member of the Assembly; or
- (c) if the person who made the appointment revokes it, acting in his or her discretion.

(4) If in respect of any item of business before the Public Accounts Committee the Governor, acting after consultation with the Speaker and the Chair of the Committee, considers that a member of the Committee has a conflict of interest, the Governor, acting in his or her discretion, may appoint another person (whether or not a member of the Assembly) temporarily to replace that member of the Committee for the purpose of dealing with the business in question, and a member so replaced shall not sit on the Committee when the Committee is dealing with that business.

(5) The Public Accounts Committee shall examine and report to the Assembly on—

- (a) the reports submitted to the Committee by the Chief Auditor under section 136; and
- (b) such management letters and reports of the Chief Auditor as have been submitted to the Committee or as have been laid before the Assembly or as the Chief Auditor has brought to the attention of the Assembly,

and shall have and exercise such other functions, and shall operate under such procedures, as may be prescribed by this Constitution or as may be prescribed by Act or by Standing Orders.

(6) The Public Accounts Committee shall have power to compel the production of documents and evidence from Ministers, departments of government and public officers, and shall meet in public.(b)

(7) The Public Accounts Committee shall report to the Assembly by the date set by the Assembly or by its terms of reference, whichever is the earlier, and except as otherwise provided in the Committee's terms of reference, such report may be with or without recommendations.

(8) If the Assembly adopts a report of the Public Accounts Committee, and requests the responsible member of the Cabinet to advise the Assembly of the action proposed to be taken by the Government of Anguilla in respect of the report, the member concerned shall convey the Government's response to the Assembly not later than the first sitting day following the expiration of six weeks after the date of the Assembly's request, unless the Assembly extends the time for the response.

(a) The UK has proposed a way for any deadlock to be broken in s.80(1)(b) (the Governor's reserved legislative power) if sufficient funds have not been appropriated within 4 months of the commencement of the financial year.

(b) New subsection proposed by UK, based on TCI Constitution section 122(6).

(9) The Chief Auditor shall be adviser to the Public Accounts Committee, and the Committee shall not meet without the presence of the Chief Auditor or his or her nominee.

(10) The Public Accounts Committee may invite any person to assist it in its work and to participate in its proceedings.

Accounting officers

133.—(1) There shall be an Accountant General of the Government of Anguilla, whose office shall be a public office.

(2) The Accountant General shall be responsible for the compilation and management of the accounts of the Government of Anguilla and for the custody and safety of public money and other resources of the Government.

(3) The most senior officer in each ministry or department of government and each institution protecting good governance shall be designated an accounting officer who shall be responsible for the regularity and propriety of the expenditure, receipts and resources of that ministry, department or institution, and shall be accountable to the Assembly.

Public debt(a)

134.—(1) The public debt of Anguilla shall be charged on the Consolidated Fund and other public funds of Anguilla.

(2) For the purposes of this section, the public debt includes the interest on that debt, sinking fund payments in respect of that debt, and the costs, charges and expenses incidental to the management of that debt.

Financial control and accounts(b)

135.—(1) The Minister of Finance shall provide the Assembly with such reports, information and accounts as may be necessary to ensure that the Assembly is kept fully informed at all times of the state of the economy of Anguilla and the finances of the Government of Anguilla.

(2) Every public corporation or other body or organisation established by or under an Act shall report its financial transactions to the Minister of Finance, who shall include such reports in the information provided to the Assembly under subsection (1).

(3) An Act shall make provision for the regular publication of accounts of the Consolidated Fund and any other public funds and for the laying of such accounts and any reports on them before the Assembly.

Audit

136.—(1) There shall be a Chief Auditor for Anguilla whose office shall be a public office.

(2) The accounts of the Assembly and all ministries, departments of government and offices (including all Commissions and individual Commissioners)], as well as every public corporation or other body or organisation established by or under an Act,](c) shall be audited and reported on annually by the Chief Auditor, and for that purpose the Chief Auditor or any person authorised by him or her in that behalf shall have access to all books, records, returns and other documents relating to such accounts.

(3) In the exercise of his or her functions under this section, the Chief Auditor shall not be subject to the direction or control of any other person or authority.

(a) New section proposed by UK, based on TCI Constitution section 120.

(b) New section proposed by UK, based on TCI Constitution section 121. We could also consider including this after section 128 to keep provisions on public debt together.

(c) The UK suggest this addition so that statutory bodies are also subject to the audit requirements set out here. This links to the requirement already in draft section 135(2) for such bodies to provide financial reports to the Minister of Finance for inclusion in reports provided to the House of Assembly.

(4) The Chief Auditor shall submit his or her reports made under subsection (2) to the Public Accounts Committee and to the Speaker of the Assembly, who shall lay them before the Assembly; and the Chief Auditor shall also send a copy of each report to the Governor.

(5) Within one month of the laying of a report before the Assembly, the Speaker shall cause such report to be published in a widely accessible form.

Remuneration of Speaker and other members of Assembly

137.—(1) There shall be paid to the Speaker and other members of the Assembly such remuneration and allowances as may be prescribed by an Act.

(2) The Assembly shall not proceed on any bill for an Act referred to in subsection (1) unless a report by the Integrity Commission recommending the appropriate levels of such remuneration and allowances has been laid before the Assembly and has been published; and no Act shall provide for levels of remuneration or allowances that exceed the levels recommended in such report.

(3) The remuneration and allowances payable to the Speaker and other members of the Assembly are hereby charged on and shall be paid out of the Consolidated Fund.

Remuneration of certain officers(a)

138.—(1) There shall be paid to the holders of the offices to which this section applies such remuneration and allowances as may be prescribed by or under an Act.

(2) The remuneration and allowances payable to the holders of those offices are hereby charged on and shall be paid out of the Consolidated Fund.

(3) The remuneration prescribed in pursuance of this section in respect of the holder of any such office and his or her other terms of service (other than allowances that are not taken into account in computing, under any law in that respect, any pension payable in respect of his or her service in that office) shall not be altered to his or her disadvantage after his or her appointment.

(4) Where a person's remuneration or other terms of service depend on his or her option, the remuneration or terms for which he or she opts shall, for the purposes of subsection (3), be deemed to be more advantageous to him or her than any others for which he or she might have opted.

(5) This section applies to the offices of Deputy Governor, Attorney-General, Director of Public Prosecutions, Chief Magistrate, Magistrate, Chief Auditor and Commissioner of Police.

(6) Nothing in this section shall preclude an Act that reduces the level of remuneration payable to the holder of any office to which this section applies where that Act makes equivalent reduction to the remuneration of all members of the public service.

PART 11(b)

TRANSITIONAL AND MISCELLANEOUS

Meaning of the appointed day

139. In this Part, "the appointed day" means the day referred to in section 1(2) of this Order, that is to say the date of commencement of this Constitution.

(a) New section proposed by UK, based on BVI Constitution section 108, Montserrat Constitution section 97, and TCI Constitution section 125.

(b) New essential chapter proposed by UK, based on BVI Constitution Chapter 10 and Montserrat Constitution sections 115 to 121.

Revocations

140. The instruments and provision specified in Schedule 2 are revoked with effect from the appointed day.

Existing laws

141.—(1) Subject to this section, the existing laws shall have effect on and after the appointed day as if they had been made in pursuance of or in consistency with this Constitution and shall be construed with such adaptations, modifications, qualifications and exceptions as may be necessary to bring them into conformity with this Constitution.

(2) The Legislature may by law make such amendments to any existing law as appear to it to be necessary or expedient for bringing that law into conformity with this Constitution or otherwise for giving effect to this Constitution; and any existing law shall have effect accordingly from such day, not being earlier than the appointed day, as may be specified in the law made by the Legislature.

(3) In this section “existing laws” means laws and instruments (other than Acts of the Parliament of the United Kingdom and instruments made under them) having effect as part of the law of Anguilla immediately before the appointed day.

Existing offices and officers

142.—(1) Any office established by or under the Anguilla Constitution Order 1982(a) and existing immediately before the appointed day shall on and after that day, so far as consistent with this Constitution, continue as if it had been established by or under this Constitution.

(2) Any person who immediately before the appointed day holds or is acting in any office continued by virtue of subsection (1) shall, on and after that day, continue to hold or act in that office as if he or she had been appointed to hold or act in it in accordance with or under this Constitution.

(3) Any person to whom subsection (2) applies who, before the appointed day, has made any oath or affirmation required to be made before assuming the functions of his or her office shall be deemed to have made any like oath or affirmation so required by this Constitution or any other law.

Director of Public Prosecutions

143. Until a person is appointed to the office of Director of Public Prosecutions in accordance with this Constitution, the Attorney-General shall perform the functions of that office.

House of Assembly

144.—(1) Every person who immediately before the appointed day is a member of the House of Assembly established by the former Constitution shall on that day become a member of the House of Assembly, shall be deemed to have complied with section 85 and shall hold his or her seat in accordance with this Constitution.

(2) The Standing Orders of the House of Assembly established by the former Constitution as in force immediately before the appointed day shall, except as may be provided under section 73, have effect on and after that day as if they had been made under that section as Standing Orders of the House of Assembly, but they shall be construed with such adaptations and modifications as may be necessary to bring them into conformity with this Constitution.

(3) In this section “former Constitution” means the Constitution set out in the Schedule to the Anguilla Constitution Order 1982.

(a) S.I. 1982/334, amended by S.I. 1983/1108, 1990/587, 2017/181, 2019/852, 2019/1461 and 2020/XXXX. [The final reference is to the Order that will update the group of persons eligible to hold the office of Deputy Speaker].

Power reserved to Her Majesty

145. There is reserved to Her Majesty full power to make laws for the peace, order and good government of Anguilla.

Richard Tilbrook
Clerk of the Privy Council

SCHEDULE 1 Sections 31(4), 33(2),
46, and 85

Forms of Oaths and Affirmations

Oath of allegiance

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

Oath for due execution of office

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

Affirmations

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

SCHEDULE 2 Section 140

Revocations

The Anguilla Constitution Order 1982 (S.I. 1982/334)

The Anguilla Constitution (Amendment) Order 1983 (S.I. 1983/1108)

The Anguilla Constitution (Amendment) Order 1990 (S.I. 1990/587)

The Emergency Powers (Overseas Territories) Order 2017, article 12(3) (S.I. 2017/181)

The Anguilla Constitution (Amendment) Order 2019 (S.I. 2019/852)

The Anguilla Constitution (Amendment) (No. 2) Order 2019 (S.I. 2019/1461)

[The Anguilla Constitution (Amendment) Order 2020 (S.I. 2020/XXXX)](a)

(a) Although not discussed during the negotiations, this references the Order in Council that will amend provisions on the Deputy Speaker.