

1990 No. 587

ANGUILLA

The Anguilla Constitution (Amendment) Order 1990

Made - - - - - *14th March 1990*

Coming into force - - - - - *30th May 1990*

At the Court at Buckingham Palace, the 14th day of March 1990

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, by virtue of the powers conferred upon Her by section 1(2) of the Anguilla Act 1980(a) or otherwise in Her Majesty vested, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:

1.—(1) This Order may be cited as the Anguilla Constitution (Amendment) Order 1990 and shall be construed as one with the Anguilla Constitution Order 1982(b).

Citation,
construction
and
commence-
ment.

(2) The Anguilla Constitution Order 1982 and this Order may be cited together as the Anguilla Constitution Orders 1982 to 1990.

(3) This Order shall come into force on 30th May 1990.

2. In this Order, "the Constitution" means the Constitution of Anguilla set out in the Schedule to the Anguilla Constitution Order 1982.

Interpretation.

3. Section 13 of the Constitution is amended—

Amendment of
section 13 of
Constitution.

(a) in subsection (3), by substituting for the words "colour or creed" the words "colour, creed or sex";

(b) by substituting for subsection (7) the following—

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

(a) whereby persons of any such description as is mentioned in subsection (3) of this section may be subjected to any restriction on the rights and freedoms guaranteed by sections 5, 8, 10, 11 and 12 of this Constitution, being such a restriction as is authorised by paragraph (a), (b) or (g) of subsection (3) of section 5, subsection (2) of section 8, subsection (5) of section 10, subsection (2) of section 11, or subsection (3) of section 12, as the case may be; or

(b) which is reasonably justifiable in a democratic society for the protection or well-being of women."

(a) 1980 c.67.

(b) S.I. 1982/334, amended by S.I. 1983/1108.

Insertion of
new section
19A in
Constitution.

4. The following new section is inserted in the Constitution after section 19—

“Office of

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

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

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

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

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

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

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

(a) the functions conferred upon the Governor by this section;
or

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

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

Amendment of
section 20 of
Constitution.

5. Section 20(1), (2) and (3) of the Constitution is amended by substituting for the words “Attorney-General” the words “Deputy Governor”.

Amendment of
section 21 of
Constitution.

6. Section 21(1) of the Constitution is amended by substituting for the words “Attorney-General” the words “Deputy Governor”.

(a) 1980 c.67.

7. Section 23 of the Constitution is amended by substituting for the words "Attorney-General and the Permanent Secretary for Finance" the words "Deputy Governor and the Attorney-General".

Amendment of section 23 of Constitution.

8. The following new section is inserted in the Constitution after section 24—

"Appointment of Parliamentary Secretary.

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

Insertion of new section 24A in Constitution.

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

9. Section 28 of the Constitution is amended—

Amendment of section 28 of Constitution.

(a) by substituting for subsection (2)(a) the following—

"(a) any matter that in his opinion relates to defence, external affairs, international financial services or any directly related aspect of finance, or internal security, including the police;"

(b) by inserting after subsection (4) the following subsections—

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

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

10. Section 35 of the Constitution is amended—

Amendment of section 35 of Constitution.

(a) in subsection (2)(b), by substituting for the words "Permanent Secretary for Finance" the words "Deputy Governor";

(b) by substituting for subsection (2)(d) the following—

"(d) two nominated members, being persons who belong to Anguilla of the age of twenty-one years or upwards, appointed by the Governor by instrument under the public seal in accordance with subsection (3) of this section.";

(c) by inserting after subsection (2) the following subsection—

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

11. Section 36 of the Constitution is amended by substituting for the words "Commonwealth citizen" the words "person who belongs to Anguilla".

Amendment of section 36 of Constitution.

Amendment of section 37 of Constitution.

12. Section 37(1) of the Constitution is amended—

- (a) in paragraph (d), by substituting for the words “any part of the Commonwealth” the words “any country”;
- (b) by substituting for paragraph (f) the following—
 - “(f) is under sentence of death imposed on him by a court of law in any country or is under a sentence of imprisonment (by whatever name called) exceeding twelve months imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court, provided that the acts constituting the offence for which such sentence was imposed would, if committed in Anguilla, have constituted an offence under the law of Anguilla;”.

Amendment of section 38 of Constitution.

13. Section 38(c) of the Constitution is amended by substituting for the words “Commonwealth citizen” the words “person who belongs to Anguilla”.

Amendment of section 39 of Constitution.

14. Section 39(1) of the Constitution is amended by substituting for all the words before the proviso the following—

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

Insertion of new section 40A in Constitution.

15. The following new section is inserted in the Constitution after section 40—

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

- (2) The Governor shall appoint as Leader of the Opposition—
 - (a) the member of the Assembly who in the judgement of the Governor, is the leader of any opposition party whose numerical strength in the Assembly is greater than that of any other opposition party; or
 - (b) if there is no such party, the member of the Assembly who in the judgement of the Governor is best able to command the support of the members of the Assembly in opposition to the Government.

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

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

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

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

(6) In the exercise of his functions under this section the Governor shall act in his discretion.”.

Amendment of section 41 of Constitution.

16. Section 41 of the Constitution is amended by inserting after the words “seat therein” in each of subsections (1), (2) and (3)(b) the words “or is required by virtue of section 39 of this Constitution to cease to perform his functions as a member”.

17. Section 43(1) of the Constitution is amended—
- (a) in paragraph (b)(i), by substituting for the words “Commonwealth citizen” the words “person who belongs to Anguilla”;
 - (b) in paragraph (b)(ii), by substituting for the words “Commonwealth citizen” the words “person who belongs to Anguilla who is”.
- Amendment of section 43 of Constitution.
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18. Section 44(1) of the Constitution is amended by substituting for paragraph (a) the following—
- “(a) is under sentence of death imposed on him by a court of law in any country or is under a sentence of imprisonment (by whatever name called) exceeding twelve months imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court, provided that the acts constituting the offence for which such sentence was imposed would, if committed in Anguilla, have constituted an offence under the law of Anguilla;”.
- Amendment of section 44 of Constitution.
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19. Section 50 of the Constitution is replaced by the following—
- “50.—(1) When the Assembly first meets after a general election, or after the office of Speaker has fallen vacant for any reason other than a dissolution of the Assembly, and before it proceeds to the despatch of any other business, the Assembly shall elect a person to be Speaker of the Assembly.
- (2) The Speaker shall be elected from among persons who are qualified for election to the Assembly but who are not members of the Executive Council.
- (3) When the Assembly first meets after a general election and before it proceeds to the despatch of any other business except the election of the Speaker, it shall elect a member of the Assembly other than an elected member to be Deputy Speaker of the Assembly; and if the office of Deputy Speaker falls vacant for any reason other than a dissolution of the Assembly, the Assembly shall, as soon as convenient, elect another such member to that office.
- (4) A person shall vacate the office of Speaker or Deputy Speaker—
- (a) on dissolution of the Assembly;
 - (b) if he resigns his office by written notice to the Governor;
 - (c) if a motion for his removal from office receives in the Assembly the affirmative votes of two-thirds of all the members thereof;
 - (d) if, being a member of the Assembly, he ceases to be a member for any reason other than a dissolution of the Assembly or if, by virtue of section 39 of this Constitution, he is required to cease to perform his functions as a member;
 - (e) in the case of the Speaker—
 - (i) if he becomes a member of the Executive Council;
 - (ii) if, not being a member of the Assembly, any circumstances arise that would cause him to be disqualified for election as a member of the Assembly by virtue of section 37(1) of this Constitution.
- (5) The Speaker or, in his absence, the Deputy Speaker or, if they are both absent, a member of the Assembly elected by the Assembly for that sitting shall preside at each sitting of the Assembly.
- (6) References in subsection (5) of this section to circumstances in which the Speaker or Deputy Speaker is absent include references to circumstances in which the office of Speaker or Deputy Speaker is vacant.”.
- Replacement of section 50 of Constitution.
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20. Section 56(1) of the Constitution is amended by substituting for the words “Bill introduced or motion proposed, in the Assembly relating to the matters referred to in subsection (1) hereof should have effect” the words “Bill introduced or motion proposed in the Assembly should have effect”.
- Amendment of section 56 of Constitution.

Amendment of section 60 of Constitution.

21. Section 60 of the Constitution is amended by inserting at the end thereof the following proviso—

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

Insertion of new section 60A in Constitution.

22. The following new section is inserted in the Constitution after section 60—

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

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

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

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

(4) A law made under section 47 of this Constitution shall make provision for giving effect to this section.”.

Amendment of section 66 of Constitution.

23. Section 66(1) of the Constitution is amended by substituting for the words “Attorney-General and Permanent Secretary for Finance” the words “Deputy Governor, Attorney-General and Chief Auditor”.

Insertion of new section 79 in Constitution.

24. The following new section is inserted in the Constitution after section 78—

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

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

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

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

Belonger status.

25.—(1) Section 18 of the Constitution is amended by deleting subsection (5).

(2) The following new section is inserted in the Constitution after section 79—

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

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

- (a) is a British Dependent Territories citizen—
 - (i) who was born in Anguilla, whether before or after the

commencement of the British Nationality Act 1981;
or if not so born

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

(3) Section 4 of the Anguilla Constitution Order 1982 is amended—

- (a) by deleting subsections (1) and (2);
- (b) in subsection (3), by substituting for the words “section 18(5)” the words “section 80(2)”;
- (c) in subsection (4)(a), by substituting for the words “subsection 5(a)(v) of section 18 of this Constitution” the words “subsection (2)(a)(v) of section 80 of the Constitution”;
- (d) in subsection (4)(b), by substituting for the words “subsection 5(a)(vi)” the words “subsection (2)(a)(vi)”.

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

Transitional provisions.

(2) The person who, immediately before the commencement of this Order, holds the office of Speaker of the Assembly shall be deemed, on and after such commencement, to

have been elected to that office in accordance with section 50 of the Constitution as amended by this Order.

G. I de Deney
Clerk of the Privy Council

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes a number of amendments to the Constitution of Anguilla set out in the Schedule to the Anguilla Constitution Order 1982, following a constitutional review in the territory.

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