

# THE CONSTITUTION OF ANTIGUA AND BARBUDA

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**WHEREAS** the People of Antigua and Barbuda-

- a. proclaim that they are a sovereign nation founded upon principles that acknowledge the supremacy of God, the dignity and worth of the human person, the entitlement of all persons to the fundamental rights and freedoms of the individual, the position of the family in a society of free men and women and free institutions;
- b. respect the principles of social justice and, therefore, believe that the operation of their economic system should result in the material resources of their community being so distributed as to serve the common good, that there should be adequate means of livelihood for all, that labour should not be exploited or forced by economic necessity to operate in inhumane conditions but that there should be opportunity for advancement on the basis of recognition of merit, ability and integrity;
- c. assert their conviction that their happiness and prosperity can best be pursued in a democratic society in which all persons may, to the extent of their capacity, play some part in the national life;
- d. recognise that the law symbolises the public conscience, that every citizen owes to it an undivided allegiance not to be limited by any private views of justice or expediency and that the State is subject to the law;
- e. desire to establish a framework of supreme law within which to guarantee their inalienable human rights and freedoms, among them, the rights to liberty, property, security and legal redress of grievances, as well as freedom of speech, of the press and of assembly, subject only to the public interest:

**NOW, THEREFORE**, the following provisions shall have effect as the Constitution of Antigua and Barbuda:-

## **CHAPTER I THE STATE AND THE CONSTITUTION**

### **THE STATE AND ITS TERRITORY.**

**1.-**

1. Antigua and Barbuda shall be a unitary sovereign democratic State.

2. The territory of Antigua and Barbuda shall comprise the islands of Antigua, Barbuda and Redonda and all other areas that were comprised in Antigua on 31st October 1981 together with such other areas as may be declared by Act of Parliament to form part of the territory of Antigua and Barbuda.

## **CONSTITUTION IS SUPREME LAW.**

2.- This Constitution is the supreme law of Antigua and Barbuda and, subject to the provisions of this Constitution, if any other laws is inconsistent with this Constitution, this Constitution shall prevail and the other law shall, to the extent of the inconsistency, be void.

## **CHAPTER II PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL**

### **FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL.**

3.- Whereas every person in Antigua and Barbuda is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, regardless of race, place of origin, political opinions or affiliations, colour, creed or sex, 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. life, liberty, security of the person, the enjoyment of property and the protection of the law;
- b. freedom of conscience, of expression (including freedom of the press) and of peaceful assembly and association; and
- c. protection for his family life, his personal privacy, the privacy of his home and other property and from deprivation of property without fair compensation,

the provisions of this Chapter shall have effect for the purpose of affording protection to the aforesaid rights and freedoms, subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of other or the public interest.

### **PROTECTION OF RIGHT TO LIFE.**

4.-

1. No person shall be deprived of his life intentionally save in execution of the sentence of a court in respect of a crime of treason or murder of which he has been convicted.
2. A person shall not be regarded as having been deprived of his life in contravention of this section if he dies as the result of the use, to such extent and such circumstances as are permitted by law, of such force as is reasonably justifiable-
  - a. for the defence of any person from violence or for the defence of property;
  - b. in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
  - c. for the purpose of suppressing a riot, insurrection or mutiny; or
  - d. in order lawfully to prevent the commission by that person of a criminal offence, or if he dies as the result of a lawful act of war.

## **PROTECTION OF RIGHT TO PERSONAL LIBERTY.**

### **5.-**

1. No person shall be deprived of his personal liberty save as may be authorised by law in any of the following cases, that is to say-
  - a. in consequence of his unfitness to plead to a criminal charge;
  - b. in execution of the sentence or order of a court, whether established for Antigua and Barbuda or some other country, in respect of a criminal offence of which he has been convicted;
  - c. in execution of an order of the High Court or of the Court of Appeal or such other court as may be prescribed by Parliament on the grounds of his contempt of any such court or of another court or tribunal;
  - d. in execution of the order of a court made in order to secure the fulfilment of any obligation imposed on him by law;
  - e. for the purpose of bringing him before a court in execution of the order of a court;
  - f. upon reasonable suspicion of his having committed or of being about to commit a criminal offence under any law;
  - g. under the order of a court or with the consent of his parent or guardian, for his education or welfare during any period ending not later than the date when he attains the age of eighteen years;
  - h. for the purpose of preventing the spread of an infectious or contagious disease;
    - 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 care or treatment or the protection of the community;
    - j. for the purpose of preventing the unlawful entry of that person into Antigua and Barbuda, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Antigua and Barbuda or for the purpose of restricting that person while he is being conveyed through Antigua and Barbuda in the course of his extradition or removal as a convicted prisoner from one country to another; or
  - 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 Antigua and Barbuda or prohibiting him from being within 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 relating to such an order after it has been made, or to such extent as may be reasonably justifiable for restraining that person during any visit that he is permitted to make to any part of Antigua and Barbuda in which, in consequence of any such order, his presence would otherwise be unlawful.

2. any person who is arrested or detained shall be informed orally and in writing as soon as reasonably practicable, in language that he understands, of the reason for his arrest or detention.
3. Any person who is arrested or detained shall have the right, at any stage and at his own expense, to retain and instruct without delay a legal practitioner of his own choice, and to hold private communications with him, and in the case of a minor he shall also be afforded a reasonable opportunity for communication with his parent or guardian.
4. When a person is arrested, excessive bail shall not be required in those cases where bail is being granted.
5. Any person who is arrested or detained-
  - a. for the purpose of bringing him before a court in execution of the order of a court; or
  - b. upon reasonable suspicion of his having committed or being about to commit a criminal offence under any law,and who is not released shall be brought before the court within forty-eight hours after his detention and, in computing time for the purposes of this subsection, Sundays and public holidays shall be excluded.
6. If any person arrested or detained as mentioned in subsection (5) (b) of this section is not tried within a reasonable time, the, without prejudice to any further proceedings which may be brought against him, he shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial and, subject to subsection (4) of this section, such conditions may include bail.
7. Any person who is unlawfully arrested or detained by any other person shall, subject to such defences as may be provided by law, be entitled to compensation for such unlawful arrest or detention from the person who made the arrest or effected the detention, from any person or authority on whose behalf the person making the arrest or effecting the detention was acting or from them both:

Provided that a judge, a magistrate or a justice of the peace or an officer of a court or a police officer acting in pursuance of the order of a judge, a magistrate or a justice of the peace shall not be under any personal liability to pay compensation under this subsection in consequence of any act performed by him in good faith in the

discharge of the functions of his office and any liability to pay any such compensation in consequence of any such act shall be a liability of the Crown.

8. For the purposes of subsection (1) (b) of this section, a person charged with a criminal offence in respect of whom a special verdict has been returned that he was guilty of the act or omission charged but was insane when he did the act or made the omission shall be regarded as a person who has been convicted of a criminal offence and the detention of that person in consequence of such a verdict shall be regarded as detention in execution of the order of a court.

## **PROTECTION FROM SLAVERY AND FORCED LABOUR**

### **6.-**

1. No person shall be held in slavery or servitude.
2. No person shall be required to perform forced labour.
3. For the purposes of this section, the expression "forced labour"e; does not include-
  - a. any labour required in consequence of the sentence or order of a court;
  - b. any labour required of any person while he 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 is detained;
  - c. any labour required of a member of a disciplined force in pursuance of his 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 person is required by law to perform in place of such service;
  - 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 FROM INHUMAN TREATMENT**

### **7.-**

1. No person shall be subjected to torture or to inhuman or degrading punishment or other such treatment.
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 authorises the infliction of any description of punishment that was lawful in Antigua on 31st October 1981.

## PROTECTION OF FREEDOM OF MOVEMENT

8.-

1. A person shall not be deprived of his freedom of movement, that is to say, the right to move freely throughout Antigua and Barbuda, the right to reside in any part of Antigua and Barbuda, the right to enter Antigua and Barbuda, the right to leave Antigua and Barbuda and immunity from expulsion from Antigua and Barbuda.
2. Any restrictions on a person's freedom of movement that is involved in his lawful detention shall not be held to be inconsistent with or in contravention of this section.
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 movements or residence within Antigua and Barbuda of any person or on any person's right to leave Antigua and Barbuda that are reasonably required in the interests of defence, public safety or public order;
  - b. for the imposition of restrictions on the movements or residence within Antigua and Barbuda or on the right to leave Antigua and Barbuda of persons generally or any class of persons in the interest of defence, public safety, public order, public morality, or public health or, in respect of the right to leave Antigua and Barbuda, of securing compliance with any international obligation of Antigua and Barbuda particulars of which have been laid before the House 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;
  - c. for the imposition of restrictions, by order of a court, on the movement or residence within Antigua and Barbuda of any person or on any person's right to leave Antigua and Barbuda either in consequence of his having been found guilty of a criminal offence under a law or for the purpose of ensuring that he appears before a court at a later date for trial of such a criminal offence or for proceedings relating to his extradition or lawful removal from Antigua and Barbuda;
  - d. for the imposition of restrictions on the freedom of movement of any person who is not a citizen;
  - e. for the imposition of restrictions on the acquisition or use by any person of land or other property in Antigua and Barbuda;
  - f. for the imposition of restrictions upon the movement or residence within Antigua and Barbuda or on the right to leave Antigua and Barbuda of any public officer that are reasonably required for the proper performance of his functions;
  - g. for the removal of a person from Antigua and Barbuda 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 some other country in execution of the sentence of a court in respect of a criminal offence under a law of which he has been convicted; or
  - h. for the imposition of restrictions on the right of any person to leave Antigua and Barbuda

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 the authority thereof is shown not to be reasonably justifiable in a democratic society.

4. If any person whose freedom of movement has been restricted by virtue of such a provision as is referred to in subsection (3) (a) of this section so requests at any time during the period of that restriction not earlier than two months after the restriction was imposed or two months after he last made such a request, as the case may be, his case shall be reviewed by an independent and impartial tribunal consisting of a president who shall be a legal practitioner of not less than seven years standing appointed by the Chief Justice and two other members appointed by the Governor-General acting in his discretion.
5. On any review by a tribunal in pursuance of subsection (4) of this section of the case of any person whose freedom of movement has been restricted, the tribunal may make recommendations concerning the necessity for or expediency of the continuation of 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.

## **PROTECTION FROM DEPRIVATION OF PROPERTY**

### **9.-**

1. No property of any description shall be compulsorily taken possession of, and no interest in or right to or over property of any description shall be compulsorily acquired, except for public use and except in accordance with the provisions of a law applicable to that taking of possession or acquisition and for the payment of fair compensation within a reasonable time.
2. Every person having a interest in or right to or over property which is compulsorily taken possession of or whose interest in or right to or over any property is compulsorily acquired shall have the right of access to the High Court for-
  - a. the determination of his interest or right, the legality of the taking of possession or acquisition of the property, interest or right and the amount of any compensation to which he is entitled; and
  - b. the purpose of obtaining payment of that compensation:

Provided that if Parliament so provides in relation to any matter referred to in paragraph (a) of this subsection the right of access shall be by way of appeal (exercisable as of right at the instance of the person having the interest in or right to or over the property) from a tribunal or authority, other than the High Court, having jurisdiction under any law to determine that matter.

3. The Chief Justice may make rules with respect to the practice and procedure of the High Court or any other tribunal or authority in relation to the jurisdiction conferred on the High Court by subsection (2) of this section or exercisable by the other tribunal or authority for the purposes of that subsection (including rules with respect to the time within which application or appeals to the High Court or applications to the other tribunals or authority may be brought).
4. Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) of this section-
  - a. to the extent that the law in question makes provision for the taking of possession or acquisition of any property, interest or right-
    - i. in satisfaction of any tax, rate or due;
    - ii. by way of penalty for breach of the law or forfeiture in consequence of breach of the law;
    - iii. as an incident of a lease, tenancy, mortgage, charge, bill of sale, pledge or contract;
    - iv. in the execution of judgements or orders of a court in proceedings for the determination of civil rights or obligations;
    - v. in circumstances where it is reasonably necessary so to do because the property is in a dangerous state or likely to be injurious to the health of human beings, animals or plants;
    - vi. in consequence of any law with respect to the limitation of actions;
    - vii. for so long as may be necessary for the purposes of any examination, investigation, trial or enquiry or, in the case of land, for the purposes of the carrying out thereon of work of soil conservation or the conservation of other natural resources or work relation to agricultural development or improvement (being work relating to such development or improvement that the owner or occupier of the land has been required, and has without reasonable excuse refused or failed, to carry out), and except so far as the 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;
  - b. to the extent that the law in question makes provision for the taking of possession or acquisition of any of the following property (including and interest in or right to or over property), that is to say-
    - i. enemy property;
    - ii. property of a deceased person, a person of unsound mind or a person who had not attained the age of eighteen years, for the purpose of its administration for the benefit of the persons entitled to the beneficial interest therein;
    - iii. the property of a person adjudged bankrupt or a body corporate in liquidation, for the purpose of its administration for the benefit of the creditors of the bankrupt or body corporate and, subject thereto, for the benefit of other persons entitled to the beneficial interest in the property; or
    - iv. property subject to a trust, for the purpose of vesting the property in persons appointed as trustees under the instrument creating the trust or by a court or by order of a court for the purposes of giving effect to the trust.
5. Nothing contained in or done under the authority of any law enacted by Parliament shall be held to

be inconsistent with or in contravention of this section to the extent that the law in question makes provision for the compulsory taking of possession of any property, or the compulsory acquisition of any interest in or right or over property, where that property, interest or right is held by a body corporate established by law for public purposes in which no monies have been invested other than monies provided by Parliament or any legislature established for the former colony or Associated State of Antigua.

6. For the purposes of this section, "use" is "public" if it is intended to result or results in a benefit or advantage to the public and, without prejudice to its generality, includes any use affecting the physical, economic, social or aesthetic well-being of the public.

## **PROTECTION OF PERSON OR PROPERTY FROM ARBITRARY SEARCH OR ENTRY**

### **10.-**

1. Except with his own consent, no person shall be subjected to the search of his person or his property or the entry by others on his premises.
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-
  - a. that is reasonably required in the interests of defence, public safety, public order, public morality, public health, public revenue, town and country planning or the development and utilisation of property in such a manner as to promote the public benefit;
  - b. that authorises an office or agent of the Government, 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 for the purpose of any tax, rate or due in order to carry out work connected with any property that is lawfully on those premises and that belongs to the Government, or to that authority or body corporate, as the case may be;
  - c. that is reasonably required for the purpose of preventing or detecting crime;
  - d. that is reasonably required for the purpose of protecting the rights or freedoms of other persons; or
  - e. that authorises, for the purpose of enforcing the judgement or order of a court in any 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.

## **PROTECTION OF FREEDOM OF CONSCIENCE**

### **11.-**

1. Except with his own consent, no person shall be hindered in the enjoyment of his freedom of conscience, and for the purposes of this section the said freedom includes freedom of thought and of religion, freedom to change his religion or belief, and freedom, either alone or in community with others, and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.
2. Except with his own consent (or, if he is under the age, of eighteen years, the consent of his parent or guardian) no person attending any place of education shall be required 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 own.
3. No person shall be compelled to take any oath which is contrary to his religion or belief or to take any oath in a manner which is contrary to his religion or belief.
4. Nothing contained in or done under that 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 reasonably required-
  - a. in the interests of defence, public safety, public order, public morality or public health; or
  - b. for the purpose of protecting the rights and freedoms of other persons, including the right to observe and practice any religion without the unsolicited intervention of members of any other religion,- 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. Reference 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 FREEDOM OF EXPRESSION INCLUDING FREEDOM OF THE PRESS**

### **12.-**

1. Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression.
2. For the purposes of this section the said freedom includes the freedom to hold opinions without interference, freedom to receive information and ideas without interference, freedom to disseminate information and ideas without interference (whether the dissemination be to the public generally or to any person or class of persons) and freedom from interference with his correspondence or other means of communication.
3. For the purposes of this section expression may be oral or written or by codes, signals, signs or

symbols and includes recordings, broadcasts (whether on radio or television), printed publications, photographs (whether still or moving), drawings, carvings and sculptures or any other means of artistic expression.

4. 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-
    - i. in the interests of defence, public safety, public order, public morality or public health; or
    - ii. for the purpose of protecting the reputations, rights and freedoms of other persons, or the private lives of persons concerned in legal proceedings and proceedings before statutory tribunals, preventing the disclosure of information received in confidence, maintaining the authority and independence of Parliament and the courts, or regulating telephony, posts, broadcasting or other means of communication, public entertainment's, public shows; or
  - b. that imposes restrictions upon public officers that are reasonably required for the proper performance of their functions,- 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.

## **PROTECTION OF FREEDOM OF ASSEMBLY AND ASSOCIATION**

### **13.-**

1. Except with his own consent, no person shall be hindered in the enjoyment of his freedom of peaceful assembly and association, that is to say, his 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 promotion and protection of his interests.
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-
  - a. that is reasonably required-
    - i. in the interests of defence, public order, public morality or public health; or
    - ii. for the purpose of protecting the rights or freedoms of other persons; or
  - b. that imposes restrictions upon public officers that are reasonably required for the proper performance of their functions,- 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.

## **PROTECTION FROM DISCRIMINATION ON THE GROUNDS OF RACE, SEX ETC.**

## 14.-

1. Subject to the provisions of subsections (4), (5) and (7) of this section, no law shall make any provision that is discriminatory either of itself or in its effect.
2. Subject to the provisions of subsections (6), (7) and (8) of this section, no person shall be treated in a discriminatory manner by any person acting by virtue of any law or in the performance of the functions of any public office or any public authority.
3. In this section, the expression "discriminatory" means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, place of origin, political opinions or affiliations, colour, creed, or sex 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 that are not accorded to persons of another such description.
4. Subsection (1) of this section shall not apply to any law so far as the law makes provision-
  - a. for the appropriation of public revenues or other public funds;
  - b. with respect to persons who are not citizens; or
  - c. whereby persons of any such description as in mentioned in subsection (3) of this section may be subjected to any disability or restriction or may be accorded any privilege or advantage that, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is reasonably justifiable in a democratic society.
5. Nothing contained in any law shall be held to be inconsistent with or in contravention of subsection (1) of this section to the extent that it makes provision with respect to qualifications (not being qualifications specifically relating to race, place of origin, political opinions or affiliations, colour, creed or sex) 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. Subsection (2) of this section shall not apply to anything that is expressly or by necessary implication authorised to be done by any such provision of law as is referred to in subsection (4) or (5) of this section.
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 that law in question makes provision whereby persons of any such description as in mentioned in subsection (3) of this section may be subjected to any restriction on the rights and freedoms guaranteed by sections 8, 10, 11, 12 and 13 of this Constitution, being such a restriction as is authorised by paragraph (a) or (b) of subsection (3) of section 8, subsection (2) of section 10, subsection (4) of section 11, subsection (4) of section 12 or subsection (2) of section 13, as the case may be.

8. Nothing in subsection (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.

## **PROVISION TO SECURE PROTECTION OF THE LAW**

### **15.-**

1. If any person is charged with a criminal offence then, unless the charge is withdrawn, he shall be afforded a fair hearing within a reasonable time by a independent and impartial court established by law.
2. Every person who is charged with a criminal offence-
  - a. shall be presumed to be innocent until he is proved or has pleaded guilty;
  - b. shall be informed orally and in writing as soon as reasonably practicable, in language that he understands, of the nature of the offence with which he is charged;
  - c. shall be given adequate time and facilities for the preparation of his defence;
  - d. shall be permitted to defend himself before the court in person or by a legal practitioner of his own choice;
  - e. shall be afforded facilities to examine in person or by his legal representative the witnesses called by the prosecution before the court and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution; and
  - f. shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the charge, and except with his own consent the trial shall not take place in his absence-
    - i. except where, under the provisions of any law entitling him thereto, he is given adequate notice of the charge, the date, time and place of the trial or continuance thereof and afforded a reasonable opportunity of appearing before the court;

Provided that where the foregoing conditions have been complied with, and the court is satisfied that owing to circumstances beyond his control he cannot appear, the trial shall not take place or continue in his absence; or

- ii. unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable and the court has ordered him to be removed and the trial to proceed in his absence.
3. When a person is tried for a any criminal offence the accused person or any person authorised by him in that behalf shall, if he so requires and subject to payment of such reasonable fees as may be prescribed by law, be given within a reasonable time after judgement a copy of any record of the

proceedings made by or on behalf of the court.

4. No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence that is more severe in degree or description than the maximum penalty that might have been imposed for that offence at the time when it was committed.
5. No person who shows that he has been tried by a competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for any criminal offence of which he could have been convicted at the trial for the offence, save upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal.
6. No person shall be tried for a criminal offence if he shows that he has been pardoned for that offence.
7. No person who is tried for a criminal offence shall be compelled to give evidence at the trial.
8. Any court or other authority prescribed by law for the determination of the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any persons before such a court or other authority, the case shall be given a fair hearing within a reasonable time.
9. Except with the agreement of all that parties thereto, all proceedings of every court and proceedings for the determination of the existence or extent of any civil right or obligation before any other authority, including the announcement of the decision of the court or other authority, shall be held in public.
10. Nothing in subsection (9) of this section shall prevent the court or other authority from excluding from the proceedings persons other than the parties thereto and the legal practitioners representing them to such an extent as the court or other authority-
  - a. may by law be empowered to do and may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice or in interlocutory proceedings or in the interests of public morality, the welfare of persons under the age of eighteen years or the protection of the private lives of persons concerned in the proceedings; or
  - b. may by law be empowered or required to do in the interests of defence, public safety, public order or public morality.
11. Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of-
  - a. subsection (2) (a) of this section, to the extent that the law in question imposes upon any person charged with a criminal offence the burden of proving particular facts;
  - b. subsection (2) (e) if this section, to the extent that the law in question imposes reasonable conditions that must be satisfied if witnesses called to testify on behalf of an accused person are to be paid their expenses out of public funds; or

- c. subsection (5) of this section, to the extent that the law in question authorises a 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 so however, that any court so trying such a member and convicting him shall in sentencing him to any punishment take into account any punishment awarded him under that disciplinary law.
12. In the case of any person who is held in lawful detention, the provisions of subsection (1), paragraphs (d) and (e) of subsection (2), and subsection (3) of this section shall not apply in relation to his trial for a criminal offence under the law regulating the discipline of persons held in such detention.
13. Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (2) of this section to the extent that it authorises the trial of a defendant by a magistrate for a summary offence to take place in the defendant's absence.
14. In this section "criminal offence" means a criminal offence under any law.

## **DEROGATION'S FROM FUNDAMENTAL RIGHTS AND FREEDOMS UNDER EMERGENCY POWERS**

**16.-** Nothing contained in or done under the authority of a law enacted by Parliament shall be held to be inconsistent with or in contravention of section 5 or section 14 of this Constitution 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 Antigua and Barbuda during that period.

## **PROTECTION OF PERSONS DETAINED-UNDER EMERGENCY LAWS**

**17.-**

1. When a person is detained by virtue of any such law as is referred to in section 16 of this Constitution the following provisions shall apply, that is to say-
  - a. he shall, with reasonable promptitude and in any case not more than seven days after the commencement of his detention, be informed in a language that he understands and in detail of the grounds upon which he is detained and furnished with a written statement in English specifying those grounds in detail;
  - b. not more than fourteen days after the commencement of his detention a notification shall be published in the Official Gazette stating that he has been detained and giving particulars of the provision of law under which his detention is authorised;
  - c. not more than one month after the commencement of his detention and thereafter during the detention at intervals of not more than six months, his case shall be reviewed by an independent and impartial tribunal established by law and presided over by a suitably qualified legal practitioner of at least seven years standing appointed by the Chief Justice;

- d. he shall be afforded reasonable facilities to consult a legal representative of his 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. at the hearing of his case by the tribunal appointed for the review of his case he shall be permitted to appear in person or by a legal practitioner of his own choice.
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 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. Nothing contained in subsection (1) (d) or subsection (1) (e) of this section shall be construed as entitling a person to legal representation at public expense.

## **ENFORCEMENT OF PROTECTIVE PROVISIONS**

### **18.-**

1. If any person alleges that any of the provisions of sections 3 to 17 (inclusive) of this Constitution has been, is being or is likely to be contravened in relation to him (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 that is lawfully available, that person (or that other person) may apply to the High Court for redress.
2. The High Court shall have original jurisdiction-
  - a. to hear and determine any application made by any person in pursuance of subsection (1) of this section; and
  - b. to determine any question arising in the case of any person that is referred to it in pursuance of subsection (3) of this section,- and may make such declaration and 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 sections 3 to 17 (inclusive) of this Constitution:

Provided that the High Court may decline to exercise its powers under this subsection if it is satisfied that adequate means of redress for the contravention alleges are or have been available to the person concerned under any other law.

3. 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 of any of the provisions of sections 3 to 17 (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 opinion, the raising of the question is merely frivolous or vexatious.

4. Where any question is referred to the High Court in pursuance of subsection (3) of this section, the High Court shall give its decision 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.
5. There shall be such provision as may be made by Parliament for conferring upon the High Court such powers in addition to those conferred by this section as may appear to be necessary or desirable for the purpose of enabling that court more effectively to exercise the jurisdiction conferred upon it by this section.
6. The Chief Justice may 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).

## **PROTECTION FROM DEROGATION'S FROM FUNDAMENTAL RIGHTS AND FREEDOMS GENERALLY**

**19.-** Except as is otherwise expressly provided in this Constitution, no law may abrogate, abridge or infringe or authorise the abrogation, abridgement or infringement of any of the fundamental rights and freedoms of the individual herein before recognised and declared.

## **DECLARATION OF PUBLIC EMERGENCY**

**20.-**

1. The Governor-General may, by Proclamation which shall be published in the Official Gazette, declare that a state of public emergency exists for the purposes of this Chapter.
2. Every declaration shall lapse-
  - a. in the case of a declaration made when Parliament is sitting, at the expiration of a period of seven days beginning with the date of 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 resolutions of both Houses of Parliament.
3. A declaration of public emergency may at any time be revoked by the Governor-General by Proclamation which shall be published in the Official Gazette.
4. A declaration of public emergency that has been approved of by resolutions of the Houses of Parliament in pursuance of subsection (2) of this section shall, subject to the provisions of subsection (3) of this section, remain in force so long as the resolutions of those Houses remain in

force and no longer.

5. A resolution of a House of Parliament passed for the purposes of this section shall remain in force for three months 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 each extension not exceeding three months from the date of the resolution effecting the extension and any such resolution may be revoked at any time by a resolution of that House.

6. 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.
7. A resolution of a House of Parliament for the purposes of subsection (2) of this section and a resolution extending any such resolution shall not be passed unless it is supported by the votes of a majority of all members of that House.
8. The Governor-General may summon the Houses of Parliament to meet for the purposes of subsection (2) of this section notwithstanding that Parliament stands dissolved, and the persons who were members of the Senate and the House immediately before the dissolution shall be deemed, for those purposes, still to be members of those Houses, but, subject to the provisions of sections 33 and 42 of this Constitution (which relate to the election of the President, Vice-President, the Speaker, and the Deputy Speaker) a House of Parliament shall not, when summoned by virtue of this subsection, transact any business other than debating and voting upon a resolution for the purpose of subsection (2) of this section.

## **INTERPRETATION AND SAVINGS**

### **21.-**

1. In this Chapter, unless the context otherwise requires- "contravention", in relation to any requirement, includes a failure to comply with that requirement, and cognate expressions shall be construed accordingly;

"court" means any court of law having jurisdiction in Antigua and Barbuda other than a court established by a disciplinary law, and includes Her Majesty in Council and, in section 4 of this Constitution, a court established by a disciplinary law;

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

"disciplined force" means-

- a. a naval, military or air force;
- b. the Police force; or
- c. a prison service;

"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;

"legal practitioner" means a person entitled to practice as a barrister in Antigua and Barbuda or, except in relation to proceedings before a court in which a solicitor has no right of audience, entitled to practice as a solicitor in Antigua and Barbuda.

2. In relation to any person who is a member of a disciplined force raised under any law, 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 this Chapter other than sections 4, and 7 of this Constitution.
3. In relation to any person who is a member of a disciplined force raised otherwise than as aforesaid and lawfully present in Antigua and Barbuda, 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 this Chapter.
4. In this Chapter "public emergency" means any period during which-
  - a. Her Majesty is at war; or
  - b. there is in force a declaration of emergency under section 20 of this Constitution, or there are in force resolutions of both Houses of Parliament supported by the votes of not less than two-thirds of all the members of each House declaring that democratic institutions in Antigua and Barbuda are threatened by subversion.
5. A Proclamation made by the Governor-General shall not be affective for the purposes of section 20 of this Constitution unless it contains a declaration that the Governor-General is satisfied-
  - a. that a public emergency has arisen as a result of the imminence of a state of war between Her Majesty and a foreign State or as a result of the occurrence of any earthquake, hurricane, flood, fire, outbreak of pestilence, outbreak of infectious disease or other calamity whether similar to the foregoing or not; or
  - b. that action has been taken or is immediately threatened by any person or body of persons of such a nature and on so extensive a scale as to be likely to endanger the public safety or to deprive the community, or any substantial portion of the community, of supplies or services essential to life.

## **CHAPTER III**

### **THE GOVERNOR-GENERAL**

#### **ESTABLISHMENT OF OFFICE**

**22.-** There shall be a Governor-General of Antigua and Barbuda who shall be a citizen appointed by Her Majesty and shall hold office during Her Majesty's pleasure and who shall be Her Majesty's representative in Antigua and Barbuda.

### **ACTING GOVERNOR-GENERAL**

**23.-**

1. During any period when the office of Governor-General is vacant or the holder of the office of Governor-General is absent from Antigua and Barbuda or is for any other reason unable to perform the functions of his office those functions shall be performed by such person as Her Majesty may appoint.
2. Any such person as aforesaid shall not continue to perform the functions of the office of Governor-General if the holder of the office of Governor-General has notified him that he is about to assume or resume those functions.
3. The holder of the office of Governor-General shall not for the purposes of this section, be regarded as absent from Antigua and Barbuda or as unable to perform the functions of his office-
  - a. by reason that he is in passage from one part of Antigua and Barbuda to another; or
  - b. at any time when there is a subsisting appointment of a deputy under section 25 of this Constitution.

### **OATHS**

**24.-** A person appointed to hold or act in the office of Governor-General shall, before entering upon the duties of that office, take and subscribe the oath of allegiance and the oath of office.

### **DEPUTY TO GOVERNOR-GENERAL**

**25.-**

1. When the Governor-General-
  - a. has occasion to be absent from the seat of government but not from Antigua and Barbuda;
  - b. has occasion to be absent from Antigua and Barbuda for a period that he considers, in his discretion, will be of short duration,- he may, acting in accordance with the advice of the Prime Minister, appoint any person in Antigua and Barbuda to be his deputy during such absence or illness and in that capacity to perform on his behalf such of the functions of the office of Governor-General as may be specified in the instrument by which he is appointed.
2. The power and authority of the Governor-General shall not be abridged, altered or in any way

affected by the appointment of a deputy under this section, and subject to the provisions of this Constitution, a deputy shall conform to and observe all instructions that the Governor-General, in his discretion, may from time to time address to him:

Provided that the question whether or not a deputy has conformed to and observed any such instructions shall not be enquired into by any court of law.

3. A person appointed as deputy under this section shall hold that appointment for such period as may be specified in the instrument by which he is appointed, and his appointment may be revoked at any time by the Governor-General, acting in accordance with the advice of the Prime Minister.

## **PUBLIC SEAL**

**26.-** The Governor-General shall keep and use the Public Seal for sealing all things that shall pass under the Public Seal.

# **CHAPTER IV PARLIAMENT**

## **PART 1**

### **ESTABLISHMENT AND COMPOSITION OF PARLIAMENT**

#### **ESTABLISHMENT OF PARLIAMENT**

**27.-** There shall be a Parliament in and for Antigua and Barbuda which shall consist of Her Majesty, a Senate and a House of Representatives.

#### **THE SENATE**

#### **COMPOSITION OF THE SENATE**

**28.-**

1. The Senate shall consist of seventeen persons who, being qualified for appointment as Senators in accordance with the provisions of this Constitution, have been so appointed in accordance with the provisions of this section and such temporary members (if any) as may be appointed in accordance with the provisions of section 32 of this Constitution.
2. Ten Senators shall be appointed by the Governor-General acting in accordance with the advice of the Prime Minister.

3. Four Senators shall be appointed by the Governor-General acting in accordance with the advice of the Leader of the Opposition.
4. Subject to subsection (7) of this section, one Senator shall be appointed by the Governor-General in his discretion from outstanding persons or persons representing such interests as the Governor-General considers ought to be represented in the Senate.
5. One Senator shall be appointed by the Governor-General acting in accordance with the advice of the Barbuda Council.
6. One Senator, being an inhabitant of Barbuda, shall be appointed by the Governor-General in accordance with the advice of the Prime Minister.
7. Before appointing any person representing interests under subsection (4) of this section the Governor-General shall consult such persons as in his discretion he considers can speak for the interests concerned and ought to be consulted.

## **QUALIFICATIONS FOR APPOINTMENT AS SENATORS**

**29.-** Subject to provisions of section 30 of this Constitution any person who at the date of his appointment-

- a. is a citizen of the age of twenty-one years or upwards;
- b. has resided in Antigua and Barbuda for a period of twelve months immediately preceding the date of his appointment; and
- c. is able to speak and, unless incapacitated by blindness or other physical cause, to read the English language with sufficient proficiency to enable him to take an active part in the proceedings of the Senate,

- shall be qualified to be appointed as a Senator.

## **DISQUALIFICATION FROM APPOINTMENT AS SENATORS**

**30.-**

1. No person shall be qualified to be appointed as a Senator who-
  - a. is, by virtue of his own act, under any acknowledgement or allegiance, obedience or adherence to a foreign power or state;
  - b. is a member of the House;
  - c. is an undischarged bankrupt, having been declared bankrupt under any law;
  - d. is a person certified to be insane or otherwise adjudged to be of unsound mind under any law;
  - e. is under sentence of death imposed on him by a court or has been sentenced to

- imprisonment (by whatever name called) for a term of or exceeding twelve months and has not either suffered the punishment to which he was sentenced or such other punishment as may be competent authority have been substituted therefor, or received a free pardon;
- f. is disqualified for election to the House by or under any law by reason of his connection with any offence relating to elections;
  - g. holds or is acting in any public office or in the office of judge of the Supreme Court or Ombudsman, or is a member of the Constituencies Boundaries Commission, the Judicial and Legal Services Commission, the Public Service Commission or the Police Service Commission;
  - h. has, within the period of ten years immediately preceding the proposed date of his appointment as a Senator, been convicted on indictment by a court of competent jurisdiction of theft, fraud or other such crime involving dishonesty and who-
    - i. has not appealed against that conviction; or
    - ii. has appealed against that conviction and whose appeal has not been allowed; and
    - iii. has not received a free pardon in respect of the offence; or
  - i. is a minister of religion.

2. Without prejudice to the provisions of subsection (1) (g) of this section, Parliament may provide that person shall not be qualified for appointment as a Senator in any of the following cases-

- a. if he holds or is acting in any office that is specified by Parliament and the functions of which involve responsibility for, or in connection with the conduct of an election or the compilation or revision of any register of electors for the purposes of an election;
- b. subject to any exceptions and limitations prescribed by Parliament, if-
  - i. he holds or is acting in any office or appointment prescribed by Parliament either individually or by reference to a class of office or appointment;
  - ii. he belongs to any armed force of Antigua and Barbuda or to any class of person that is comprised in any such force; or
  - iii. he belongs to the Police Force or to any class of person that is comprised in the Police Force.

3. For the purpose of subsection (1) (e) of this section-

- a. two or more sentences of imprisonment that are required to be served consecutively shall be regarded as separate sentences if none of those sentences exceeds twelve months, but if any one of such sentences exceeds that term they shall be regarded as one sentence; and
- 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.

## **TENURE OF OFFICE OF SENATORS**

### **31.-**

1. Every Senator shall vacate his seat in the Senate-

- a. at the next dissolution of Parliament after he has been appointed;
- b. if he is with his consent nominated as a candidate for election to the House;
- c. if he ceases to be a citizen;
- d. if he is absent from the sittings of the Senate for such period or periods and in such circumstances as may be prescribed by the rules of procedure of the Senate;
- e. subject to the provisions of subsection (2) of this section, if any circumstances arise that, if he were not a Senator, would cause him to be disqualified for appointment as such by virtue of subsection (1) of section 30 of this Constitution or of any law enacted in pursuance of subsection (2) of that section;
- f. if the Governor-General, acting in accordance with the advice of Prime Minister in the case of a Senator appointed in accordance with that advice, or in accordance with the advice of the Leader of the Opposition in the case of a Senator appointed in accordance with that advice, or in accordance with the advice of the Barbuda Council in the case of a Senator appointed in accordance with that advice, or in his discretion in the case of a Senator appointed by him in his discretion, declares the seat of that Senator to be vacant;
- g. if, having been appointed under the provisions of section 28(6) of this Constitution, he ceases to be an inhabitant of Barbuda.
- a. If circumstances such as are referred to in subsection (1) (e) of this section arise because a Senator is convicted of a felony or of any other offence involving dishonesty, sentenced to death or imprisonment, adjudged to be of unsound mind, or declared bankrupt or is convicted of any offence relating to elections in circumstances that disqualify him for election to the House, and if it is open to the Senator to appeal against the decision (either with the leave of a court or other authority or without such leave), he shall forthwith cease to perform his functions as a Senator but, subject to the provisions of this subsection, he shall not vacate his seat until the expiration of thirty days thereafter:

Provided that the President may, at the request of the Senator, from time to time extend that period for further periods of thirty days to enable the Senator to pursue an appeal against the decision, so, however, that extensions of time exceeding in the aggregate one hundred and fifty days shall not be given without the approval, signified by resolution, of the Senate.

- b. If on the determination of an appeal, such circumstances continue to exist and no further appeal is open to the Senator, or if, by reason of the expiration of any period for entering an appeal or notice thereof or the refusal of leave to appeal or for any other reason, it ceases to be open to the Senator to appeal, he shall forthwith vacate his seat.
- c. If at any time before the Senator vacates his seat such circumstances as aforesaid cease to exist his seat shall not become vacant on the expiration of the period referred to in paragraph (a) of this subsection and he may resume the performance of his functions as a Senator.

## **APPOINTMENT OF TEMPORARY SENATORS.**

### **32.-**

1. Whenever a Senator is incapable of performing his functions as a Senator by reason of his absence from Antigua and Barbuda or by reason of his suspension under section 31(2) of this Constitution or by reason of illness, the Governor-General may appoint a person qualified for appointment as a Senator to be temporarily a member of the Senate during such absence, suspension or illness.
2. The provisions of section 31 of this Constitution shall apply to a member of the Senate appointed under this section as they apply to a Senator appointed under section 28 of this Constitution and a appointment made under this section shall in any case cease to have effect if the person appointed is notified by the Governor-General that the circumstances giving rise to his appointment have ceased to exist.
3. In the exercise of the powers conferred upon him by this section, the Governor-General shall act-
  - a. in accordance with the advice of the Prime Minister in relation to a Senator appointed in pursuance of section 28(2) or 28(6) of this Constitution;
  - b. in accordance with the advice of the leader of the Opposition in relation to a Senator appointed in pursuance of section 28(3) of this Constitution;
  - c. in his discretion in relation to a Senator appointed by him pursuant to section 28(4) of this Constitution; and
  - d. in accordance with the advice of the Barbuda Council in relation to a Senator appointed in pursuance of section 28(5) of this Constitution.

### **PRESIDENT AND VICE-PRESIDENT.**

### **33.-**

1. When the Senate first meets after any general election and before it proceeds to the despatch of any other business, it shall elect a Senator to be President, and if the office of President falls vacant at any time before the next dissolution of Parliament, the Senate shall, as soon as practicable, elect another Senator to be President.
2. When the Senate first meets after any general election and before it proceeds to any other business except the election of the President, it shall elect a Senator to be Vice-President; and if the office of Vice-President falls vacant at any time before the next dissolution of Parliament, the Senate shall, as soon as practicable, elect another Senator to be Vice-President.
3. The Senate shall not elect a Senator who is a Minister or Parliamentary Secretary to be President of Vice-President.
4. No business (other than the election of a President) shall be transacted in the Senate at any time

when the office of the President is vacant.

5. A person shall vacate the office of President or Vice-President-
  - a. if he ceases to be a Senator, except that the President shall not vacate his office by reason only that he has ceased to be a Senator on a dissolution of Parliament until the Senate first meets after that dissolution; or
  - b. if he is appointed to be a Minister or Parliamentary Secretary or;
  - c. in the case of the Vice-President, if he is elected to be President.
- a. If, under section 31(2) of this Constitution, the person who is President or Vice-President is suspended from the performance of his functions as a Senator, he shall also cease to perform his functions as President or Vice-President, as the case may be, and those functions shall, until he vacates his seat in the Senate or resumes the performance of his functions as Senator, be performed-
  - i. in the case of the President, by the Vice-President or if the office of Vice-President is vacant or the person who is Vice-President is suspended from the performance of his functions as a Senator under section 31(2) of this Constitution, by such Senator (not being a Minister or a Parliamentary Secretary) as the Senate may elect for the purpose; and
  - ii. in the case of the Vice-President, by such Senator (not being a Minister or Parliamentary Secretary) as the Senate may elect for the purpose.
- b. If the President or Vice-President resumes the performance of his functions as a Senator in accordance with the provisions of section 31(2) of this Constitution, he shall also resume the performance of his functions as President or Vice-President, as the case may be.

#### **ATTENDANCE OF ATTORNEY-GENERAL AT PROCEEDINGS OF SENATE.**

**34.-** The President, Vice-President or other member presiding in the Senate may request the Attorney-General to attend any proceedings of the Senate if he considers that the business before the Senate in those proceedings makes the presence of the Attorney-General desirable; and where he is so requested the Attorney-General may take part in the proceedings of the Senate solely for the purpose of giving explanations concerning matters before the Senate in those proceedings and he shall not vote in the Senate.

#### **ATTENDANCE AT PROCEEDINGS OF SENATE OF MINISTERS WHO ARE MEMBERS OF THE HOUSE.**

**35.-**

1. The President, Vice-President or other member presiding in the Senate may request a Minister who is a member of the House to attend any proceedings of the Senate if he considers that the business before the Senate in those proceedings falls within the portfolio of the Minister concerned and if he considers the presence of such Minister desirable.

2. A Minister who is so requested to attend any proceedings of the Senate may take part in the proceedings solely for the purpose of giving explanations concerning matters falling within his portfolio and he shall not vote in the Senate.

## **THE HOUSE OF REPRESENTATIVES**

### **COMPOSITION OF THE HOUSE.**

#### **36.-**

1. Subject to the provisions of this section, the House shall consist of a number of elected members equal to the number of constituencies from time to time established by Order under Part 4 of this Chapter, who shall be elected in such a manner as may, subject to the provisions of this Constitution, be prescribed by or under any Act of Parliament.
2. If the person holding the office of Speaker is not otherwise a member of the House, he shall be a member of the House by virtue of holding that office.
3. If the person holding or acting in the office of Attorney-General is not otherwise a member of the House he shall be a member of the House by virtue of holding or acting in that office but shall not vote in the House.

### **ATTENDANCE AT PROCEEDINGS OF THE HOUSE OF MINISTERS WHO ARE SENATORS.**

#### **37.-**

1. The Speaker, Deputy Speaker or other member presiding in the House may request a Minister who is a Senator to attend any proceedings of the House if he considers that the business before the House in those proceedings falls within the portfolio of the Minister concerned and if he considers the presence of such Minister desirable.
2. A Minister who is so requested to attend any proceeding of the House may take part in the proceedings solely for the purpose of giving explanations concerning matters falling within his portfolio and he shall not vote in the House.

### **QUALIFICATIONS FOR ELECTION AS A MEMBER OF THE HOUSE.**

- 38.- Subject to the provisions of section 39 of this Constitution, any person who at the date of his election-
  - a. is a citizen of the age of twenty-one years or upwards;
  - b. has resided in Antigua and Barbuda for a period of twelve months immediately preceding the date of his election; and

c. is able to speak and, unless incapacitated by blindness or other physical cause, to read the English language with sufficient proficiency to enable him to take an active part in the proceedings of the House.

- shall be qualified to be elected as a member of the House.

## **DISQUALIFICATION'S FROM ELECTION AS A MEMBER OF THE HOUSE.**

**39.-**

1. No person shall be qualified to be elected as a member of the House who-
  - a. is, by virtue of his own act, under any acknowledgement of allegiance, obedience or adherence to a foreign power or state;
  - b. is a Senator or temporary member of the Senate;
  - c. is an undischarged bankrupt, having been declared bankrupt under any law;
  - d. is a person certified to be insane or otherwise adjudged to be of unsound mind under any law;
  - e. is under sentence of death imposed on him by a court or has been sentenced to imprisonment (by whatever name called) for a term of or exceeding twelve months and has not either suffered the punishment to which he was sentenced or such other punishment as may by competent authority have been substituted therefor, or received a free pardon;
  - f. is disqualified for appointment to the House by or under any law by reason of his connection with any offence relating to elections;
  - g. holds or is acting in any public office or in the office of judge of the Supreme Court or Ombudsman or is a member of the Constituencies Boundaries Commission, the Judicial and Legal Services Commission, the Public Service Commission or the Police Service Commission;
  - h. has, within the period of ten years immediately preceding the proposed date of his election as a member of the House, been convicted on indictment by a court of competent jurisdiction of theft, fraud, or other such crime involving dishonesty and who-
    - i. has not appealed against that conviction, or
    - ii. has appealed against that conviction and whose appeal has not been allowed; and
    - iii. has not received a free pardon in respect of the offence; or
  - i. is a minister of religion.
2. Without prejudice to the provisions of subsection (1) (g) of this section, Parliament may provide that a person shall not be qualified for election as a member of the House in any of the following cases-
  - a. if he holds or is acting in any office that is specified by Parliament and the functions of which involve responsibility for, or in connection with, the conduct of an election or the compilation or revision of any register of electors for the purposes of an election;
  - b. subject to any exceptions and limitations prescribed by Parliament, if-
    - i. he holds or is acting in any office or appointment prescribed by Parliament either

- individually or by reference to a class of office or appointment; or
  - ii. he belongs to any armed force of Antigua and Barbuda or to any class of person that is comprised in any such force.
3. For the purpose of subsection (1) (e) of this section.
- a. two or more sentences of imprisonment that are required to be served consecutively shall be regarded as separate sentences if none of those sentences exceeds twelve months but if any of such sentences exceeds that term they shall be regarded as one sentence; and
  - 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.

## **ELECTION OF MEMBERS OF THE HOUSE.**

### **40.-**

1. Each of the constituencies established in accordance with the provisions of section 62 of this Constitution shall return one member to the House who shall be directly elected in such manner as may, subject to the provisions of this Constitution, be prescribed by or under any law.
2. Every Commonwealth citizen of the age of eighteen years or upwards who possesses such qualifications relating to residence or domicile in Antigua and Barbuda as parliament may prescribe shall, unless he is disqualified by any law from registration as a voter for the purpose of electing a member of the House, be entitled to be registered as such a voter in accordance with the provisions of any law in that behalf and no other person may be registered.
3. Every person who is registered as a voter in pursuance of subsection (2) of this section in any constituency shall, unless he is disqualified by any law from voting in that constituency in any election of members of the House, be entitled so to vote in accordance with the provisions of any law in that behalf.
4. In any election of members of the House the votes shall be exercised freely and shall be given by secret ballot in such manner as parliament may prescribe.

## **TENURE OF SEATS OF MEMBERS OF THE HOUSE.**

### **41.-**

1. Every member of the House shall vacate his, seat in the House-
  - a. at the next dissolution of Parliament after he has been elected;
  - b. if he ceases to be a citizen;
  - c. if he is absent from the sittings of the House for such period or periods and in such circumstances as may be prescribed in the rules of procedure of the House;

- d. subject to the provisions of subsection (2) of this section, if any circumstances arise that, if he were not a member of the House, would cause him to be disqualified from election as such by virtue of section 39(1) of this Constitution; or
- e. if, having been elected to the House by virtue of being a member of a political party, he resigns his party whip and withdraws his allegiance from that party:

Provided that he shall not be required to vacate his seat so long as he remains an independent member of the House.

- a. If circumstances such as are referred to in subsection (1) (d) of this section arise because a member of the House is convicted of a felony or of any other offence involving dishonesty, sentenced to death or imprisonment, adjudged to be of unsound mind, or declared bankrupt, or is convicted of any offence relating to elections in circumstances that disqualify him for election to the House, and if it is open to the member to appeal against the decision (either with the leave of a court or other authority or without such leave), he shall forthwith cease to perform his functions as a member of the House but, subject to the provision of this section, he shall not vacate his seat until the expiration of a period of thirty days thereafter:

Provided that the Speaker may, at the request of the member from time to time, extend that period for further periods of thirty days to enable the member to pursue an appeal against the decision, so, however, that extensions of time exceeding in the aggregate one hundred and fifty days shall not be given without the approval, signified by resolution, of the House.

- b. If on the determination of any appeal, such circumstances continue to exist and no further appeal is open to the member, or if, by reason of the expiration of any period for entering an appeal or notice thereof or the refusal to leave to appeal or for any other reason, it ceases to be open to the member to appeal, he shall forthwith vacate his seat.
  - c. If at any time before the member of the House vacates his seat such circumstances as aforesaid cease to exist, his seat shall not become vacant on the expiration of the period referred to in paragraph (a) of this subsection and he may resume the performance of his functions as a member of the House.
3. Where an elected member of the House vacates his seat in the House pursuant to the provisions of paragraph (b) to (e) of subsection (1) of this section or of subsection (2) of this section or where the seat of an elected member of the House is vacant for any other reason except a dissolution of Parliament, there shall be a by-election to fill the seat in the House vacated by that member and the by-election shall be held no later than one hundred and twenty days after the day on which the seat of the member of the House became vacant unless Parliament is sooner dissolved.

## **SPEAKER AND DEPUTY SPEAKER.**

1. When the House first meets after any general election and before it proceeds to the despatch of any other business, it shall elect a person to be the Speaker; and if the office of Speaker falls vacant at any time before the next dissolution of Parliament the House shall, as soon as practicable, elect another person to that office.
2. The Speaker may be elected either from among the members of the House or from among persons who are not members of the House but are qualified to be elected as such.
3. When the House first meets after any general election, and before it proceeds to any other business except the election of the Speaker, it shall elect a member of the House to be Deputy Speaker, and if the office of Deputy Speaker falls vacant at any time before the next dissolution of Parliament the House shall, as soon as practicable, elect another such member to that office.
4. The House shall not elect a member who is a Minister or Parliamentary Secretary to be a Speaker or Deputy Speaker of the House.
5. No business (other than the election of a Speaker) shall be transacted in the House at any time when the office of Speaker is vacant.
6. A person shall vacate the office of Speaker-
  - a. in the case of a Speaker elected from among persons who are not members of the House-
    - i. when the House first meets after any dissolution of Parliament; or
    - ii. if he ceases to be a citizen;
    - iii. if any circumstances arise that would cause him to be disqualified for election as a member of the House by virtue of any of the provisions of section 39 of this Constitution; or
  - b. in the case of a Speaker elected from among the members of the House-
    - i. if he ceases to be a member of the House except that the Speaker shall not vacate his office by reason only that he has ceased to be a member of the House on a dissolution of Parliament until the House first meets after the dissolution; or
    - ii. if he is appointed to be a Minister or Parliamentary Secretary.
7. A person shall vacate the office of Deputy Speaker-
  - a. if he ceases to be a member of the House;
  - b. if he is appointed to be a Minister or a Parliamentary Secretary; or
  - c. if he is elected to be Speaker.
  - a. If, by virtue of section 41(2) of this Constitution, the Speaker or Deputy Speaker is required to cease to perform his functions as a member of the House, he shall also cease to perform his functions as Speaker or Deputy Speaker, as the case may be, and those functions shall, until he vacates his seat in the House or resumes the performance of the functions of his office, be performed-

- i. in the case of the Speaker, by the Deputy Speaker or, if the office of Deputy Speaker is vacant or the Deputy Speaker is required to cease to perform his functions as a member of the House by virtue of section 41(2) of this Constitution, by such member of the House (not being a Minister or Parliamentary Secretary) as the House may elect for the purpose; or
  - ii. in the case of the Deputy Speaker, by such member of the House (not being a Minister or Parliamentary Secretary) as the House may elect for the purpose.
9. If the Speaker or Deputy Speaker resumes the performance of his functions as a member of the House in accordance with the provisions of section 41(2) of this Constitution, he shall also resume the performance of his functions as Speaker or Deputy Speaker, as the case may be.

## **CLERKS TO HOUSES OF PARLIAMENT AND THEIR STAFFS.**

### **43.-**

1. There shall be a Clerk to the Senate and a Clerk to the House but the two offices may be held by the same person.
2. Subject to the provisions of any law enacted by Parliament, the office of Clerk of each House of Parliament and the offices of the members of their staff shall be public offices.

## **DETERMINATION OF QUESTIONS OF MEMBERSHIP.**

### **44.-**

1. The High Court shall have jurisdiction to hear and determine any question whether-
  - a. any person has been validly elected as a member of the House;
  - b. any person has been validly appointed as a Senator or as a temporary member of the Senate;
  - c. any person who has been elected as Speaker from among persons who were not members of the House was qualified to be so elected or has vacated the office of Speaker; or
  - d. any member of the House has vacated his seat or is required under the provisions of section 41(2) of this Constitution to cease to perform any of his functions as a member of the House.
2. Any application to the High Court for the determination of any question under subsection (1) (a) of this section may be made by any person entitled to vote in the election to which the application relates or by any person who was a candidate at that election or by the Attorney-General.
3. An application to the High Court for the determination of any question under subsection (1) (b) or subsection (1) (c) of this section may be made by any member of the House or by the Attorney-General.

4. An application to the High Court for the determination of any question under subsection (1) (d) of this section may be made-
  - a. by any member of the House or by the Attorney-General; or
  - b. in the case of the seat of a member of the House; by any person registered in some constituency as a voter for the purpose of electing members of the House.
5. If any application is made by a person other than the Attorney-General to the High Court for the determination of any question under this section, the Attorney-General may intervene and may then appear or be represented in the proceedings.
6. An appeal shall lie as of right to the Court of Appeal from any final decision of the High Court determining such a question as is referred to in subsection (1) of this section.
7. The circumstances and manner in which and the imposition of conditions upon which any application may be made to the High Court for the determination of any question under this section and the powers, practice and procedure of the High Court and the Court of Appeal in relation to any such application shall be regulated by such provision as may be made by Parliament.
8. No appeal shall lie from any decision of the Court of Appeal in exercise of the jurisdiction conferred by subsection (6) of this section and no appeal shall lie from any decision of the High Court in proceedings under this section other than a final decision determining such a question as is referred to in subsection (1) of this section.
9. In the exercise of his functions under this section the Attorney-General shall not be subject to the direction or control of any other person or authority.

## **UNQUALIFIED PERSONS SITTING OR VOTING.**

### **45.-**

1. Any person who sits or votes in either House of Parliament knowing or having reasonable grounds for knowing that he is not entitled to do so shall be guilty of an offence and liable to a fine not exceeding five hundred dollars, or such other sum as may be prescribed by Parliament, for each day on which he or she sits or votes in that House.
2. Any prosecution for an offence under this section shall be instituted in the High Court and shall not be so instituted except by the Director of Public Prosecutions.

## **PART 2 POWERS AND PROCEDURE OF PARLIAMENT**

### **POWER TO MAKE LAWS.**

**46.-** Subject to the provisions of this Constitution, Parliament may make laws for the peace, order and good government of Antigua and Barbuda.

## **ALTERNATION OF THIS CONSTITUTION AND SUPREME COURT ORDER.**

**47.-**

1. Parliament may alter any of the provisions of this Constitution or of the Supreme Court Order in the manner specified in the following provisions of this section.
2. A bill to alter this constitution or the Supreme Court Order shall not be regarded as being passed by the House unless on its final reading in the House the bill is supported by the votes of not less than two-thirds of all the members of the House.
3. An amendment made by the Senate to such a bill as is referred to in subsection (2) of this section that has been passed by the House shall not be regarded as being agreed to by the House for the purpose of section 55 of this Constitution unless such agreement is signified by resolution supported by the votes of not less than two-thirds of all the members of the House.
4. For the purposes of section 55(4) of this Constitution, an amendment of a bill to alter this Constitution or the Supreme Court Order shall not be suggested to the Senate by the House unless a resolution so to suggest the amendment has been supported by the votes of not less than two-thirds of all the members of the House.
5. A bill to alter this section, schedule 1 to this constitution or any of the provisions of this Constitution specified in Part I of that schedule or any of the provisions of the Supreme Court Order specified in Part II of that schedule shall not be submitted to the Governor-General for his assent unless-
  - a. there has been an interval of not less than ninety days between the introduction of the bill in the House and the beginning of the proceedings in the House on the second reading of the bill in that House;
  - b. after it has been passed by both Houses of Parliament or, in the case of a bill to which section 55 of this Constitution applies, after its rejection by the Senate for the second time; and
  - c. the bill has been approved on a referendum, held in accordance with such provisions as may be made in that behalf by Parliament, by not less than two-thirds of all the votes validly cast on that referendum.
6. Every person who, at the time when the referendum is held, would be entitled to vote in elections of members of the House shall be entitled to vote on referendum held for the purposes of this section in accordance with such procedures as may be prescribed by parliament for the purposes of the referendum and no other person shall be entitled so to vote.

7. The conduct of any referendum for the purposes of subsection (5) of this section shall be under the general supervision of the Supervisor of Elections and shall be in accordance with such provisions as may be made in that behalf by Parliament.
  - a. A bill to alter this Constitution or the Supreme Court Order shall not be submitted to the Governor-General for his assent unless it is accompanied by a certificate under the hand of the Speaker (or, if the Speaker is for any reason unable to exercise the functions of his office, the Deputy Speaker) that the provisions of subsection (2), (3) or (4), as the case may be, of this section have been complied with and, where a referendum has been held, by a certificate of the Supervisor of Elections stating the results of the referendum.
  - b. The certificate of the Speaker or, as the case may be, the Deputy Speaker under this subsection (2), (3) or (4) of this section have been complied with and shall not be enquired into in any court of law.

#### **OATH OF ALLEGIANCE BY MEMBERS OF PARLIAMENT.**

48.-

1. No member of either House of Parliament shall take part in the proceedings of that House (other than proceedings necessary for the purpose of this section) until he has made and subscribed before that House the oath of allegiance:

Provided that the election of a President or Vice-President and the election of a Speaker and Deputy Speaker may take place before the members of the Senate or the House, as the case may be, have made and subscribed such oath.

2. References in this section to a member of a House of parliament include references to any person who is a member of the House by virtue of holding the office of Speaker or by virtue of holding or acting in the office of Attorney-General.

#### **PRESIDING IN SENATE AND HOUSE.**

49.-

1. The President or, in his absence, the Vice-President or, if they are both absent, a Senator (not being a Minister or a Parliamentary Secretary) elected by the Senate for that sitting shall preside at any sitting of the Senate:

Provided that the President or Vice-President, as the case may be, shall not preside when a motion for his removal from office is before the Senate.

2. The Speaker, or in his absence, the Deputy Speaker, or if they are both absent, a member of the

House (not being a Minister or Parliamentary Secretary) elected by the House for that sitting shall preside at any sitting of the House:

Provided that the speaker or Deputy Speaker, as the case may be, shall not preside when a motion for his removal from office is before the House.

## **QUORUM.**

### **50.-**

1. If at any sitting of either House of Parliament any member of that House who is present draws the attention of the person presiding at the sitting to the absence of a quorum and, after such interval as may be prescribed in the rules of procedure of that House, the person presiding at the sitting ascertains that a quorum of that House is still not present, that House shall be adjourned.
2. For the purpose of this section a quorum of the Senate shall consist of six members, and a quorum of the House shall consist of six members or such greater number in each case as may be prescribed by Parliament and in neither case shall the person presiding at the sitting be included in reckoning whether there is a quorum present.

## **VOTING.**

### **51.-**

1. Save as otherwise provided in this Constitution, any question proposed for decision in a House of Parliament shall be determined by a majority of the votes of the members present and voting.
2. The President or other member presiding in the Senate and the Speaker or other member presiding in the House shall not vote unless on any question the votes are equally divided, in which case, except as otherwise provided in this section, he shall have and exercise a casting vote:

Provided that in the case of the question of the final reading of a bill as referred to in section 47(2) of this Constitution a Speaker or other member presiding in the House who is an elected member of the House shall have an original vote but no casting vote.

3. A Speaker who is not an elected member of the House shall have neither an original nor a casting vote and if, upon any question before the House when such a Speaker is presiding, the votes of the members are equally divided, the motion shall be lost.

## **MODE OF EXERCISING LEGISLATIVE POWER.**

### **52.-**

1. The power of Parliament to make laws shall be exercised by bills passed by the Senate and the House (or in the cases mentioned in sections 54 and 55 of this Constitution by the House) and assented to by the Governor-General on behalf of Her Majesty.
2. When a bill is presented to the Governor-General for assent in accordance with this Constitution, he shall signify that he assents thereto.
3. When the Governor-General assents to a bill that has been submitted to him in accordance with the provisions of this Constitution the bill shall become law and the Clerk of the House shall thereupon cause it to be published in the Official Gazette as law.
4. No law made by Parliament shall come into operation until it has been published in the Official Gazette but Parliament may postpone the coming into operation of any such law.

## **RESTRICTIONS WITH REGARD TO CERTAIN FINANCIAL MEASURES.**

### **53.-**

1. A bill other than a money bill may be introduced in either House of Parliament; a money bill shall not be introduced in the Senate.
2. Except on the proposal of a Minister authorised so to do by the Cabinet, neither House shall-
  - a. proceed upon any bill (including any amendment to a bill) that, in the opinion of the person presiding, makes provision for any of the following purposes:-
    - i. for the imposition of taxation or the alteration of taxation otherwise than by reduction;
    - ii. for the imposition of any charge upon the Consolidated Fund or any other public fund of Antigua and Barbuda or the alteration of any such charge otherwise than by reduction;
    - iii. for the payment, issue or withdrawal from the Consolidated Fund or any other public fund of Antigua and Barbuda of any monies not charged thereon or any increase in the amount of such payment, issue or withdrawal; or
    - iv. for the composition or remission of any debt due to the Crown; or
  - b. proceed upon any motion (including any amendment to a motion) the effect of which, in the opinion of the person presiding, would be to make provision for any of those purposes.

## **RESTRICTIONS ON POWERS OF SENATE AS TO MONEY BILLS.**

### **54.-**

1. If a money bill, having been passed by the House and sent to the Senate at least one month before

the end of the session, is not passed by the Senate without amendment within one month after it is sent to the Senate, the bill shall, unless the House otherwise resolves, be presented to the Governor-General for assent notwithstanding that the Senate has not consented to the bill.

2. There shall be endorsed on every money bill when it is sent to the Senate the certificate of the Speaker signed by him that it is a money bill; and there shall be endorsed on any money bill that is presented to the Governor-General for assent in pursuance of subsection (1) of this section, the certificate of the Speaker signed by him that it is a money bill and that the provisions of that subsection have been complied with.

## **RESTRICTIONS ON POWERS OF SENATE AS TO BILLS OTHER THAN MONEY BILLS.**

**55.-**

1. This section applies to any bill other than a money bill that is passed by the House in two successive sessions (whether or not Parliament is dissolved between those sessions) and, having been sent to the Senate in each of those sessions at least one month before the end of the session, is rejected by the Senate in each of those sessions.
2. A bill to which this section applies shall, on its rejection for the second time by the Senate, unless the House otherwise resolves, be submitted to the Governor-General for assent notwithstanding that the Senate has not consented to the bill:

Provided that-

- a. the foregoing provisions of this subsection shall not have effect unless at least three months have elapsed between the date on which the bill is passed by the House in the first session and the date on which it is passed by the House in the second session; and
  - b. a bill such as is referred to in subsection (5) of section 47 of this Constitution shall not be submitted to the Governor-General for his assent unless the provisions of that subsection have been complied with and the power conferred on the House by this subsection to resolve that a bill shall not be presented to the Governor-General for assent shall not be exercised in respect of such a bill.
3. For the purposes of this section a bill that is sent to the Senate from the House in any session shall be deemed to be the same bill as a former bill sent to the Senate in the preceding session if, when it is sent to the Senate, it is identical with the former bill or contains only such alterations as are certified by the Speaker to be necessary owing to the time that has elapsed since the date of the former bill or to represent any amendments which have been made by the Senate in the former bill in the preceding session.
  4. The House may, if it thinks fit, on the passage through the House of a bill that is deemed to be the same bill as a former bill sent to the Senate in the preceding session, suggest any amendments

without inserting the amendments in the bill, and any such amendments shall be considered by the Senate and, if agreed to by the Senate, shall be treated as amendments made by the Senate and agreed to by the House; but the exercise of this power by the house shall not affect the operation of this section in the event of the rejection of the bill in the Senate.

5. There shall be inserted in any bill that is submitted to the Governor-General for assent in pursuance of this section any amendments that are certified by the Speaker to have been made in the bill by the Senate in the second session and agreed to by the House.
6. There shall be endorsed on any bill that is presented to the Governor-General for assent in pursuance of this section the certificate of the Speaker signed by him that the provisions of this section have been complied with.

## **PROVISIONS RELATING TO SECTIONS 53, 54 AND 55.**

### **56.-**

1. In sections 53, 54 and 55 of this Constitution, "money bill" means a public bill which, in the opinion of the speaker, contains only provisions dealing with all or any of the following matters, namely, the imposition, repeal, remission, alteration or regulation of taxation; the imposition for the payment of debt or other financial purposes, of charges on public money, or the variation or repeal of any such charges; the grant of money to the Crown or to any authority or person, or the variation or revocation of any such grant; the appropriation, receipt, custody, investment, issue or audit of accounts of public money; the raising or guarantee of any loan or the repayment thereof, or the establishment, alteration, administration or abolition of any sinking fund provided in connection with any such loan; or subordinate matters incidental to any of the matters aforesaid; and in this subsection the expressions "taxation", "debt", "public money" and "loan" do not include any taxation imposed, debt incurred or money provided or loan raised by any local authority or body for local purposes.
2. For the purposes of section 52 of this Constitution, a bill shall be deemed to be rejected by the Senate if-
  - a. it is not passed by the Senate without amendment; or
  - b. it is passed by the Senate with any amendment that is not agreed to by the House.
3. Whenever the office of Speaker is vacant or the Speaker is for any reason unable to perform any function conferred on him by section 54 or 55 of this Constitution or subsection (1) of this section, that function may be performed by the Deputy Speaker.
4. Any certificate of the Speaker or Deputy Speaker given under section 54 or 55 of this Constitution shall be conclusive for all purposes and shall not be questioned in any court of law.

## **REGULATION OF PROCEDURE OF HOUSES OF PARLIAMENT.**

**57.-**

1. Subject to the provisions of this Constitution, each House of Parliament may regulate its own procedure and may in particular make rules for the orderly conduct of its own proceedings.
2. Each House of Parliament may act notwithstanding any vacancy in its membership (including any vacancy not filled when the House first meets after any general election) and the presence or participation of any person not entitled to be present at or to participate in the proceedings of the House shall not invalidate those proceedings.

## **FREEDOM OF SPEECH IN PROCEEDINGS OF PARLIAMENT.**

**58.-**

1. Without prejudice to any provision made by Parliament relating to the powers, privileges and immunities of Parliament and its committees, or the privileges and immunities of the members and officers of either House of Parliament and of other persons concerned in the business of Parliament or its committees, no civil or criminal proceedings may be instituted against any member of either House of Parliament for words spoken before, or written in a report to, the House of Parliament of which he is a member or a committee thereof or any joint committee of the Senate and the House or by reason of any matter or thing brought by him therein by petition, bill, resolution, motion or otherwise.
2. References in this section to a member of a House of Parliament include references to any person who is a member of the House by virtue of holding the office of Speaker or by virtue of holding or acting in the office of Attorney-General.
3. Where the Attorney-General or a Minister takes part in the proceedings of the Senate in accordance with a request made under section 34 or, as the case may be, under section 35 of this Constitution, and gives explanations in the Senate pursuant to those sections, the provisions of subsection (1) of this section shall apply in relation to the Attorney-General or, as the case may be, to that Minister as they apply in relation to a member of the Senate.
4. Where a Minister takes part in the proceedings of the House in accordance with a request under section 37 of this Constitution and gives explanations in the House pursuant to that section, the provisions of subsection (1) of this section shall apply in relation to that Minister as they apply in relation to a member of the House.

## **PART 3**

### **SUMMONING, PROROGATION AND DISSOLUTION OF PARLIAMENT**

#### **SESSIONS OF PARLIAMENT.**

## **59.-**

1. Each session of Parliament shall be held at such place within Antigua and Barbuda and shall begin at such time (not being later than six months from the end of the preceding session if Parliament has been prorogued or four months from the end of that session if Parliament has been dissolved) as the Governor-General shall by Proclamation appoint.
2. Subject to the provisions of subsection (1) of this section, not more than three months shall elapse between sittings of Parliament during any session of Parliament and, subject thereto, the sittings of Parliament shall be held at such time and place as Parliament may, by its rules of procedure or otherwise, determine.

## **PROROGATION AND DISSOLUTION OF PARLIAMENT.**

## **60.-**

1. Subject to the provisions of subsection (5) of this section, the Governor-General, acting in accordance with the advice of the Prime Minister, may at any time prorogue or dissolve Parliament.
2. Subject to the provisions of subsection (3) of this section, Parliament, unless sooner dissolved, shall continue for five years from the date of its first sitting after any dissolution, and shall then stand dissolved.
3. At any time when Her Majesty is at war, Parliament may extend the period of five years specified in subsection (2) of this section for not more than twelve months at a time so, however, that the life of Parliament shall not be extended under this subsection for more than five years.
4. Where between a dissolution of Parliament and the next ensuing general election of members to the House, an emergency arises of such a nature that in the opinion of the Prime Minister, it is necessary for the two Houses to be summoned before the general election can be held, the Governor-General, acting in accordance with the advice of the Prime Minister, may summon the two Houses of the preceding Parliament but the election of members of the House shall proceed and the Parliament that has been summoned shall, if not sooner dissolved, again stand dissolved on the day on which the general election is held.
5. The Governor-General in his discretion may dissolve Parliament if the majority of all the members of all the members of the House pass a resolution that they have no confidence in the Government and the Prime Minister does not within seven days of the passing of that resolution either resign from his office or advise a dissolution of Parliament.

## **GENERAL ELECTIONS AND APPOINTMENT OF SENATORS.**

### **61.-**

1. A general election of members of the House shall be held at such time within three months after every dissolution of Parliament as the Governor-General, acting in accordance with the advice of the Prime Minister, shall appoint.
2. As soon as practicable after every general election the Governor-General shall proceed under section 28 of this constitution to the appointment of Senators.

## **PART 4 DELIMITATION'S OF CONSTITUENCIES**

### **CONSTITUENCIES.**

### **62.-**

1. For the purpose of the election of members of the House, Antigua and Barbuda shall be divided into such number of constituencies, at least one of which shall be within Barbuda, having such boundaries as may be provided for by an Order made by the Governor-General in accordance with the provisions of section 65 of this Constitution.
2. Each constituency shall return one member to the House.

### **CONSTITUENCIES BOUNDARIES COMMISSION.**

### **63.-**

1. There shall be a Constituencies Boundaries Commission for Antigua and Barbuda which shall be appointed from time to time to review the number, and the boundaries, of the constituencies and report thereon to the Speaker in accordance with the provisions of this Part and which shall consist of-
  - a. a chairman who shall be appointed by the Governor-General acting in accordance with the advice of the Prime Minister given after the Prime Minister has consulted with the Leader of the Opposition;
  - b. two members appointed by the Governor-General acting in accordance with the advice of the Prime Minister; and
  - c. one member appointed by the Governor-General acting in accordance with the advice of the Leader of the Opposition.
2. A person shall not be qualified to be appointed as a member of a Constituencies Boundaries

Commission if he is a Senator, a member of the House or a public officer.

3. Subject to the provisions of this section, a member of a Constituencies Boundaries Commission shall vacate his office if any circumstances arise that, if he were not a member of a Constituencies Boundaries Commission, would cause him to be disqualified for appointment as such.
4. All members of a Constituencies Boundaries Commission shall vacate office and the Commission shall cease to exist-
  - a. twelve months after the date when the report of the Commission is submitted to the Speaker under section 64 of this Constitution;
  - b. on the date when an Order consequent upon the report of the Commission is made the Governor-General under section 65 of this Constitution, or
  - c. at the dissolution of Parliament next after the appointment of the Commission, whichever is the earlier.
5. A member of a Constituencies Boundaries Commission may be removed from office but only for inability to discharge the functions thereof (whether arising from infirmity of mind or body or any other cause) or for misbehaviour, and he shall not be so removed except in accordance with the provisions of this section.
6. A member of a Constituencies Boundaries Commission shall be removed from office by the Governor-General if the question of his removal from office has been referred to a tribunal appointed under subsection (7) of this section and the tribunal has recommended to the Governor-General that he ought to be removed from office for inability as aforesaid or for misbehaviour.
7. If the Prime Minister or the Leader of the Opposition represents to the Governor-General that the question of removal of a member of a Constituencies Boundaries Commission from office for inability as aforesaid or for misbehaviour ought to be investigated then-
  - a. the Governor-General shall appoint a tribunal which shall consist of a chairman and not less than two other members selected by the Governor-General, acting in accordance with the advice of the Chief Justice, from among persons who hold or have held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from any such court; and
  - b. the tribunal shall enquire into the matter and report on the facts thereof to the Governor-General and recommend to the Governor-General whether the member of the Constituencies Boundaries Commission ought to be removed from office for inability as aforesaid or for misbehaviour.
8. A Constituencies Boundaries Commission may regulate its own procedure.
9. A Constituencies Boundaries Commission may, with the consent of the Prime Minister confer powers and impose duties on any public officer or on any authority of the Government for the purpose of the discharge of its functions.

10. A Constituencies Boundaries Commission may, subject to its rules of procedure, act notwithstanding any vacancy in its membership and its proceedings shall not be invalidated by the presence or participation of any person not entitled to be present or to participate in those proceedings:

Provided that any decision of the Commission shall require the concurrence of a majority of all its members.

11. In the exercise of its functions under this Constitution, a Constituencies Boundaries Commission shall not be subject to the control or direction of any other person or authority.

## **REPORT BY COMMISSION.**

### **64.-**

1. A Constituencies Boundaries Commission shall on its appointment forthwith proceed to review the number of constituencies into which Antigua and Barbuda is divided and the boundaries thereof and shall submit a report to the Speaker stating whether, and if so what, alterations the Commission recommends should be made to the number or the boundaries of those constituencies.
2. A report by a Constituencies Boundaries Commission shall be submitted to the Speaker under this section not less than two or more than five years after the date when the last such report was submitted.
3. In reviewing the number, and the boundaries, of the constituencies and making its report thereon, a Constituencies Boundaries Commission shall be guided by such general principles as may be prescribed by Parliament.

## **PROCEDURE UPON REPORT.**

### **65.-**

1. As soon as may be after a Constituencies Boundaries Commission has submitted a report under section 64 of this Constitution, the Prime Minister shall lay before the House for its approval the draft of an Order by the Governor-General for giving effect, whether with or without modifications, to the recommendations contained in the report, and that draft Order may make provision for any matters which appear to the Prime Minister to be incidental to or consequential upon the other provisions of the draft.
2. Where any draft Order submitted to the House under this section gives effect to any such recommendations with modifications, the Prime Minister shall lay before the House together with the draft Order a statement of the reasons for the modifications.

3. If the motion for the approval of any draft Order laid before the House under this section is rejected by the House, or is withdrawn by leave of the House, the Prime Minister shall amend the draft Order and lay the amended draft before the House.
4. If any draft Order laid before the House under this section is approved by resolution of the House, the Prime Minister shall submit it to the Governor-General who shall make an Order in terms of the draft; and that Order shall come into force upon the next dissolution of Parliament after it is made.
5. The question of the validity of any Order by the Governor-General purporting to be made under this section and reciting that a draft thereof had been approved by resolution of the House shall not be enquired into in any court of law.

## **PART 5 THE OMBUDSMAN**

### **ESTABLISHMENT, APPOINTMENT, FUNCTIONS ETC. OF OMBUDSMAN.**

#### **66.-**

1. There shall be an officer of Parliament who shall be known as the Ombudsman who shall not hold any other office of emolument either in the public service or otherwise nor engage in any occupation for reward other than the duties of his office.
2. The Ombudsman shall be appointed by resolutions of each House of Parliament for such term as may be prescribed therein.
3. The Ombudsman shall not enter upon the duties of his office until he has taken and subscribed before the Speaker the oath of allegiance and the oath of office.
4. Parliament may make provision for the functions, powers and duties of the Ombudsman.
5. The Ombudsman may be removed from office only for inability to exercise the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and shall not be so removed except in accordance with the provisions of this section.
6. The Ombudsman shall be removed from office by resolutions of both Houses of Parliament if the question of his removal from office has been referred to a tribunal appointed under subsection (7) of this section and the tribunal has recommended to Parliament that he ought to be removed from office for inability as aforesaid or for misbehaviour.

7. If by both Houses of Parliament it is resolved that the question of removing the Ombudsman under this section ought to be investigated, then-
  - a. the Speaker shall appoint a tribunal which shall consist of a chairman and not less than two other members selected by the Chief Justice from among persons who hold or have held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from such a court; and
  - b. the tribunal shall enquire into the matter and report on the facts thereof to the Speaker and recommend to Parliament through the Speaker whether the Ombudsman ought to be removed under this section.
8. If the question of removing the Ombudsman has been referred to a tribunal under this section, both Houses of Parliament may by resolution suspend the Ombudsman from the functions of his office and any such suspension may at any time be revoked by resolutions of both Houses of Parliament, and shall in any case cease to have effect if the tribunal recommends to Parliament through the Speaker that the Ombudsman should not be removed.
9. If at any time the Ombudsman is for any reason unable to exercise the functions of his office, both Houses of Parliament may by resolutions appoint a person to act as Ombudsman, and any person so appointed shall, subject to the provisions of subsections (7) and (8) of this section, continue to act until the Ombudsman has resumed his functions or until the appointment to act has been revoked by resolutions of both Houses of Parliament.
10. The Ombudsman shall, in the exercise of his functions under this Constitution, not be subject to the direction or control of any other person or authority.

## **PART 6**

### **THE SUPERVISOR OF ELECTIONS**

#### **APPOINTMENT, FUNCTIONS AND REMOVAL OF SUPERVISOR OF ELECTIONS.**

**67.-**

1. The Governor-General shall by notice published in the Gazette appoint a Supervisor of Elections on resolutions to that effect of both Houses of Parliament specifying the person nominated for appointment.
2. The Supervisor of Elections shall have and exercise such functions, powers and duties as may be provided by law.
3. The office of the Supervisor of Elections shall be a public office.

4. Subject to the provisions of subsection (6) of this section, the Supervisor of Elections shall vacate his office when he attains such age, or at the expiration of such term, as may be prescribed by Parliament.
5. A person holding the office of Supervisor of Elections may be removed from office only for inability to exercise the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and shall not be so removed except in accordance with the provisions of this section.
6. The Supervisor of Elections shall be removed from office by the Governor-General if the question of his removal from office has been referred to a tribunal appointed under subsection (7) of this section and the tribunal has recommended to the Governor-General that he ought to be removed for inability as aforesaid or for misbehaviour.
7. If resolutions of both Houses of Parliament are passed to the effect that the question of removing the Supervisor of Elections under this section ought to be investigated then-
  - a. the Governor-General shall appoint a tribunal which shall consist of a chairman and not less than two other members, selected from among persons who hold or have held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from such a court; and
  - b. the tribunal shall enquire into the matter and report on the facts thereof to the Governor-General and recommend to him whether the Supervisor of Elections ought to be removed under this section.
8. If the question of removing the Supervisor of Elections has been referred to a tribunal under this section, the Governor-General, acting in accordance with the advice of the Public Service Commission, may suspend the Supervisor of Elections from the exercise of the functions of his office and any such suspension may at any time be revoked by the Governor-General acting in accordance with such advice as aforesaid, and shall in any case cease to have effect if the tribunal recommends to the Governor-General that the Supervisor of Elections should not be removed.
9. If at any time the Supervisor of Elections is for any reason unable to exercise the functions of his office, the Governor-General shall by notice published in the Official Gazette appoint a person to act as Supervisor of Elections on resolutions to that effect of both Houses of Parliament specifying the person nominated for appointment, and any person so appointed shall, subject to the provisions of subsections (7) and (8) of this section, continue to act until the Supervisor of Elections has resumed his functions or until the appointment to act has been revoked by the Governor-General on resolutions to that effect by both Houses of Parliament.

## **CHAPTER V**

### **EXECUTIVE POWERS**

## **PART 1 GENERAL**

### **EXECUTIVE AUTHORITY.**

**68.-**

1. The executive authority of Antigua and Barbuda is vested in Her Majesty.
2. Subject to the provisions of this Constitution, the executive authority of Antigua and Barbuda may be exercised on behalf of Her Majesty by the Governor-General either directly or through officers subordinate to him.
3. Nothing in this section shall prevent Parliament from conferring functions on persons or authorities other than the Governor-General.

### **MINISTER OF GOVERNMENT.**

**69.-**

1. There shall be a Prime Minister of Antigua and Barbuda who shall be appointed by the Governor-General.
2. Whenever there is occasion for the appointment of a Prime Minister, the Governor-General shall appoint as Prime Minister-
  - a. a member of the House who is the leader in the House of the political party that commands the support of the majority of members of the House; or
  - b. where it appears to him that such party does not have an undisputed leader in the House or that no party commands the support of such a majority, the member of the House who in his judgement is most likely to command the support of the majority of members of the House,  
- and is willing to accept the office of Prime Minister.
3. Subject to the provision of section 82 of this Constitution and subsection (4) of this section there shall be, in addition to the office of Prime Minister, such other offices of Minister (including Minister of State) of the Government as may be established by Parliament or, subject to the provisions of any law enacted by Parliament, by the Governor-General, acting in accordance with the advice of the Prime Minister.
4. The Ministers other than the Prime Minister shall be such persons as the Governor-General, acting in accordance with the advice of the Prime Minister, shall appoint from among the members of the

House and of the Senate.

5. If occasion arises for making appointment to the office of Prime Minister or any other Minister while Parliament is dissolved, then, notwithstanding any other provision of this section, a person who was a member of the House immediately before the dissolution may be appointed as Prime Minister or any other Minister and a person who was a Senator immediately before the dissolution may be appointed as any Minister other than Prime Minister.
6. Appointments under this section shall be made by instrument under the Public Seal.

## **THE CABINET.**

### **70.-**

1. There shall be a Cabinet for Antigua and Barbuda which shall have the general direction and control of the Government and shall be collectively responsible therefor to Parliament.
2. The Cabinets shall consist of the Prime Minister and such number of other Ministers (of whom one shall be the Attorney-General), appointed in accordance with the provisions of section 69 of this Constitution as the Prime Minister may consider appropriate.

## **ALLOCATION OF PORTFOLIOS.**

### **71.-**

1. The Governor-General, acting in accordance with the advice of the Prime Minister, may, by directions in writing, assign to the Prime Minister or any other Minister responsibility for any business of the Government, including the administration of any department of government.
2. Where a Minister is incapable of performing his functions by reason of his absence from Antigua and Barbuda or by reason of illness, the Governor-General, acting in accordance with the advice of the Prime Minister, may appoint a member of the House or a Senator to act in the office of such Minister during such absence or illness.

## **TENURE OF OFFICE OF MINISTERS.**

### **73.-**

1. Where the House passes a resolution supported by the votes of a majority of all the members of the House declaring that it has no confidence in the Prime Minister and the Prime Minister does not within seven days of the passing of that resolution either resign from his office or advise the Governor-General to dissolve Parliament, the Governor-General shall revoke the appointment of

the Prime Minister.

2. The Prime Minister shall also vacate his office-
  - a. when after any dissolution of Parliament he is informed by the Governor-General that the Governor-General is about to reappoint him as Prime Minister or to appoint another person as Prime Minister; or
  - b. where for any reason other than a dissolution of Parliament he ceases to be a member of the House.
3. A Minister other than the Prime Minister shall vacate his office-
  - a. when any person is appointed or re-appointed as Prime Minister;
  - b. where for any reason other than a dissolution of Parliament he ceases to be a member of the House of Parliament from among the members of which he was appointed; or
  - c. where his appointment is revoked by the Governor-General acting in accordance with the advice of the Prime Minister.
4. Where at any time the Prime Minister is required under the provisions of section 41(2) of this Constitution to cease to perform his functions as a member of the House, he shall cease during such time to perform any of his functions as Prime Minister.
5. Where at any time a Minister other than the Prime Minister is required under section 31(2) or section 41 of this Constitution to cease to perform his functions as a member of the House to which he belongs, he shall cease during such time to perform any of his functions as Minister.

## **PERFORMANCE OF FUNCTIONS OF PRIME MINISTER DURING ABSENCE, ILLNESS OR SUSPENSION.**

### **74.-**

1. Where the Prime Minister is absent from Antigua and Barbuda or is unable by reason of illness or of the provisions of section 73(4) of this Constitution to perform the functions conferred on him by this Constitution, the Governor-General may authorise some other member of the Cabinet to perform those functions (other than the functions conferred by subsection (2) of this section) and that member may perform those functions until his authority is revoked by the Governor-General.
2. The powers of the Governor-General under this section shall be exercised by him in accordance with that advice of the Prime Minister, save that where the Governor-General considers that it is impracticable to obtain the advice of the Prime Minister owing to his absence or illness, or where the Prime Minister is unable to tender the advice by reason of the provisions of section 73(4) of this Constitution, the Governor-General may exercise those powers in his discretion.

## **PARLIAMENTARY SECRETARIES.**

## **75.-**

1. The Governor-General, acting in accordance with the advice of the Prime Minister, may appoint Parliamentary Secretaries from among members of the House and of the Senate to assist Ministers in the performance of their duties.
2. Where occasion arises for making an appointment under this section while Parliament is dissolved, a person who was a Senator or a member of the House immediately before the dissolution may be appointed as a Parliamentary Secretary.
3. The office of a Parliamentary Secretary shall become vacant-
  - a. where for any reason other than a dissolution of Parliament he ceases to be a member of the House of Parliament from among the members of which he was appointed; or
  - b. upon the appointment or re-appointment of any person as Prime Minister; or
  - c. where the Governor-General, acting in accordance with the advice of the Prime Minister, so directs.

## **OATHS TO BE TAKEN BY MINISTERS AND PARLIAMENTARY SECRETARIES.**

**76.-** The Prime Minister, every other Minister and every Parliamentary Secretary shall, before entering upon the duties of his office, make and subscribe the oath of allegiance, the oath of office and the oath of secrecy.

## **SECRETARY TO THE CABINET.**

## **77.-**

1. There shall be a Secretary to the Cabinet whose office shall be a public office.
2. The Secretary to the Cabinet, who shall have charge of the Cabinet office, shall be responsible in accordance with such instructions as may be given him by the Prime Minister, for arranging the business for, and keeping the minutes of, the Cabinet and for conveying the decisions of the Cabinet to the appropriate person or authority and shall have such other functions as the Prime Minister may direct.
3. The Secretary to the Cabinet shall, before entering upon the duties of his office, make and subscribe the oath of secrecy.

## **PERMANENT SECRETARIES.**

## **78.-**

1. Where any Minister has been assigned responsibility for any department of government, he shall exercise direction and control over that department; and, subject to such direction and control, the department shall be under the supervision of a Permanent Secretary whose office shall be a public office.
2. For the purposes of this section:-
  - a. two or more government departments may be placed under the supervision of one Permanent Secretary; and
  - b. two or more Permanent Secretaries may supervise any department of government assigned to a Minister.

## **LEADER OF THE OPPOSITION.**

**79.-**

1. There shall (except at times when there are no members of the House who do not support the Government) be a Leader of the Opposition who shall be appointed by the Governor-General.
2. Whenever there is occasion for the appointment of a Leader of the Opposition the Governor-General shall appoint the member of the House who appears to him most likely to command the support of a majority of the members of the House who do not support the Government; or, if no member of the House appears to him to command such support, the member of the House who appears to him to command the support of the largest single group of members of the House who do not support the Government:

provided that-

- a. if there are two or more members of the House who do not support the Government but none of them commands the support of the other or others, the Governor-General may, acting in his discretion, appoint any one of them as Leader of the Opposition, and
  - b. in the exercise of his discretion the Governor-General shall be guided by the seniority of each based on his length of service as a member of the House, by the number of votes cast in favour of each at the last election of members of the House or by both such seniority and such number of votes.
3. If the occasion arises to appoint a Leader of the Opposition during the period between a dissolution of Parliament and the day on which the ensuing election of members of the House is held, an appointment may be made as if Parliament had not been dissolved.
4. The office of Leader of the Opposition shall become vacant-

- a. if he ceases to be a member of the House otherwise than by reason of a dissolution of Parliament;
  - b. if, when the House first meets after a dissolution of Parliament, he is not then a member of the House;
  - c. if, under the provisions of section 41(2) of this Constitution, he is required to cease to perform his functions as a member of the House; or
  - d. if he is removed from office by the Governor-General under the provisions of subsection (5) of this section.
5. If it appears to the Governor-General that the Leader of the Opposition is no longer able to command the support of a majority of the members of the House who do not support the Government or the support of the largest single group of members of the House who do not support the Government, he shall remove the Leader of the Opposition from office.
  6. The powers of the Governor-General under this section shall be exercised by him in his discretion.
  7. Where the office of Leader of the Opposition is vacant, whether because there is no member of the House so qualified for appointment or because the Leader of the Opposition has resigned his office or for any other reason, any provision in this Constitution requiring consultation with or the advice of the Leader of the Opposition shall, in so far as it requires such consultation or advice, be of no effect.

## **EXERCISE OF GOVERNOR-GENERAL'S FUNCTIONS.**

### **80.-**

1. In the exercise of his functions the Governor-General shall act in accordance with the advice of the Cabinet or a Minister acting under the general authority of the Cabinet, except in cases where other provision is made by this Constitution or any other law, and, without prejudice to the generality of this exception, in case where by this Constitution or any other law he is required to act-
  - a. in his discretion;
  - b. after consultation with any person or authority other than Cabinet; or
  - c. in accordance with the advice of the Prime Minister or any person or authority other than the Cabinet.
2. Nothing in subsection (1) of this section shall apply to the functions conferred upon the Governor-General by the following provisions of this Constitution, that is to say, sections 63(6), 67(6), 73(1), 87(8) and 99(5) (which require the Governor-General to remove the holders of certain offices from office in certain circumstances).
3. Where in the exercise of his functions the Governor-General is required to act in accordance with

the advice of the Cabinet or a Minister acting under the general authority of the Cabinet, and it has become impracticable for the Governor-General to obtain such advice, he may exercise those functions in his discretion.

4. Where in the exercise of his functions the Governor-General is required to act in accordance with the advice of, or after consultation with, the Leader of the Opposition and there is a vacancy in the office of the Leader of the Opposition or if the Governor-General considers that it is impracticable to obtain the advice of the Leader of the Opposition, the Governor-General may exercise those functions in his discretion.
5. Where in the exercise of his functions the Governor-General is required to act after consultation with any person or authority he shall not be obliged to exercise that function in accordance with the advice of that person or authority.
6. Any reference in this Constitution to the functions of Governor-General shall be construed as a reference to his powers and duties in the exercise of the executive authority of Antigua and Barbuda and to any other powers and duties conferred or imposed on him as Governor-General by or under this Constitution or any other law.

## **GOVERNOR-GENERAL TO BE INFORMED CONCERNING GOVERNMENT MATTERS.**

**81.-** The Prime Minister shall keep the Governor-General regularly and fully informed concerning the general conduct of the Government and shall furnish the Governor-General as soon as possible with such information as the Governor-General, acting in his discretion, may request from time to time with respect to any particular matter relating to the Government.

## **ATTORNEY-GENERAL.**

**82.-**

1. There shall be an Attorney-General of Antigua and Barbuda who shall be the principal legal adviser to the Government and who shall be appointed by the Governor-General.
2. No person shall be qualified to hold or to act in the office of Attorney-General unless he is a citizen entitled to practice as a barrister in Antigua and Barbuda.
3. If the Attorney-General is an elected member of the House at the time of his appointment or subsequently becomes such a member, he shall be a Minister by virtue of holding the office of Attorney-General and the provisions of subsections (3) to (6) of section 69 of this Constitution shall apply to the office of Attorney-General.
4. Where the person holding the office of Attorney-General is a member of the House by virtue of

holding that office he may be appointed by the Governor-General to be a Minister.

5. If an Attorney-General appointed to be a Minister under the preceding subsection vacates his office as Attorney-General he shall also vacate his office as a Minister.
6. If the Attorney-General is not a Minister he shall vacate his office if he ceases to be a citizen or if his appointment is revoked by the Governor-General.
7. If the office of the Attorney-General is vacant or the holder of the office is for any reason unable to perform the functions thereof the Governor-General may appoint a suitably qualified person to act in the office, but the provisions of subsections (3) and (4) of this section shall not apply to a person so appointed.
8. An appointment under the preceding subsection shall cease to have effect when it is revoked by the Governor-General.

## **EXERCISE OF CERTAIN POWERS OF GOVERNOR-GENERAL**

**83.-** The powers of the Governor-General under the preceding section shall be exercised by him in accordance with the advice of the Prime Minister.

## **POWER OF PARDON.**

**84.-**

1. The Governor-General may, in Her Majesty's name and on Her Majesty's behalf-
  - a. grant to any person convicted of any offence against any law a pardon, either free or subject to lawful conditions;
  - b. grant to any person a respite, either indefinite or for a specified period, from the execution of any punishment imposed on that person for such an offence;
  - c. substitute a less severe form of punishment for that imposed by any sentence for such an offence; or
  - d. remit the whole or any part of any sentence passed for such an offence or any penalty or forfeiture otherwise due to Her Majesty on account of such an offence.
2. The powers of the Governor-General under subsection (1) of this section shall be exercised by him in accordance with the advice of a Minister designated by him acting in accordance with the advice of the Prime Minister.

## **ADVISORY COMMITTEE ON PREROGATIVE OF MERCY.**

**85.-** There shall be an Advisory Committee on the Prerogative of Mercy which shall consist of-

- a. the Minister referred to in subsection 84(2) of this Constitution who shall be Chairman;
- b. the Attorney-General (if he is not the Chairman);
- c. the Chief Medical Officer of the Government;
- d. not more than four other members appointed by the Governor-General, after consultation with the Prime Minister and the Leader of the Opposition.

## **FUNCTIONS OF ADVISORY COMMITTEE.**

### **86.-**

1. Where an offender has been sentenced to death by any court for an offence against any law, the Minister shall cause a written report of the case from the trial judge (or the Chief Justice, if a report from the trial judge cannot be obtained) together with such other information derived from the record of the case or elsewhere as the Minister may require, to be taken into consideration at a meeting of the Advisory Committee.
2. The Minister may consult with the Advisory Committee before tendering any advice to the Governor-General under section 84(2) of this Constitution in any case not falling within subsection (1) of this section.
3. The Minister shall not be obliged in any case to act in accordance with the advice of the Advisory Committee.
4. The Advisory Committee may regulate its own procedure.
5. In this section "the Minister" means the Minister referred to in section 84(2) of this Constitution.

## **PART 2**

### **DIRECTOR OF PUBLIC PROSECUTIONS**

#### **APPOINTMENT AND REMOVAL OF DIRECTOR OF PUBLIC PROSECUTIONS.**

### **87.-**

1. There shall be a Director of Public Prosecutions whose office shall be a public office.
2. The Director of Public Prosecutions shall be appointed by the Governor-General, acting in accordance with the advice of the Judicial and Legal Services Commission.
3. If the office of Director of Public Prosecutions is vacant or if the holder of the office is for any reason unable to exercise the functions of his office, the Governor-General, acting in accordance

with the advice of the Judicial and Legal Services Commission, may appoint a person to act as Director.

4. A person shall not be qualified to be appointed to hold or act in the office of Director or Public Prosecutions unless-
  - a. he is qualified to practice as a barrister in a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth; and
  - b. he has practised for not less than seven years as a barrister in such court.
5. A person appointed to act in the office of Director of Public Prosecutions shall, subject to the provisions of subsections (6) (8) (9) and (10) of this section, cease so to act-
  - a. when a person is appointed to hold that office and has assumed the functions thereof or, as the case may be, when the person in whose place he is acting resumes the functions of that office; or
  - b. at such earlier time as may be provided in the terms of his appointment.
6. Subject to the provisions of subsection (8) of this section, the Director of Public Prosecutions shall vacate his office when he attains the prescribed age.
7. A person holding the office of Director of Public Prosecutions may be removed from office only for inability to exercise the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and shall not be so removed except in accordance with the provisions of this section.
8. The Director of Public Prosecutions shall be removed from office by the Governor-General if the question of his renewal from office has been referred to a tribunal appointed under subsection (9) of this section and the tribunal has recommended to the Governor-General that he ought to be removed for inability as aforesaid or for misbehaviour.
9. If the chairman of the Judicial and Legal Services Commission represents to the Governor-General that the question of removing the Director of Public Prosecutions under this section ought to be investigated, then-
  - a. the Governor-General shall appoint a tribunal which shall consist of a chairman and not less than two other members, selected from among persons who hold or have held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from such a court; and
  - b. the tribunal shall enquire into the matter and report on the facts thereof to the Governor-General and recommend to him whether the Director of Public Prosecutions ought to be removed under this section.

10. If the question of removing the Director of Public Prosecutions has been referred to a tribunal under this section, the Governor-General, acting in accordance with the advice of the Judicial and Legal Services Commission, may suspend the Director from the exercise of the functions of his office and any such suspension may at any time be revoked by the Governor-General acting in accordance with such advice as aforesaid, and shall in any case cease to have effect if the tribunal recommends to the Governor-General that the Director should not be removed.
11. The prescribed age for the purposes of subsection (6) of this section is the age of fifty-five years or such other age as may be prescribed by Parliament.

## **POWERS AND FUNCTIONS OF DIRECTOR OF PUBLIC PROSECUTIONS.**

### **88.-**

1. The Director of Public Prosecutions shall, subject to section 89 of this Constitution, have power in any case in which he considers it proper to do so-
  - a. to institute and undertake criminal proceedings against any person before any court (other than a court martial) in respect of any offence against any law;
  - b. to take over and continue any such criminal proceedings that may have been instituted by any other person or authority;
  - c. to discontinue at any stage before judgement is delivered any such criminal proceedings instituted or undertaken by himself or any other person or authority.
2. Subject to section 89 of this Constitution, the powers conferred on the Director of Public Prosecutions by paragraph (b) and (c) of subsection (1) of this section shall be vested in him to the exclusion of any other person or authority:

Provided that, 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 and with the leave of the court.
3. For the purposes of this section a reference to criminal proceedings includes an appeal from the determination of any court in criminal proceedings or a case stated or a question of law reserved in respect of those proceedings.
4. The functions of the Director of Public Prosecutions under subsection (1) of this section may be exercised by him in person or through other persons acting under and in accordance with his general or special instructions.
5. Subject to section 89 of this Constitution, in the exercise of the functions vested in him by subsection (1) of this section and by section 45 of this Constitution, the Director of Public Prosecutions shall not be subject to the direction or control of any other person or authority.

## **DIRECTIONS TO DIRECTOR OF PUBLIC PROSECUTIONS.**

**89.-**

1. The Attorney-General may, in the case of any offence to which this section applies, give general or special directions to the Director of Public Prosecutions as to the exercise of the powers conferred upon the Director of Public Prosecutions by section 88 of this Constitution and the Director of Public Prosecutions shall act in accordance with those directions.
2. This section applies to-
  - a. offences against any law relating to-
    - i. official secrets;
    - ii. mutiny or incitement to mutiny; and
  - b. any offence under any law relating to any right or obligation of Antigua and Barbuda under international law.

## **CHAPTER VI FINANCE**

### **CONSOLIDATED FUND.**

**90.-** All revenues or other monies raised or received by Antigua and Barbuda (not being revenues or other monies that are payable, by or under any law for the time being in force in Antigua and Barbuda, into some other fund established for a specific purpose) shall be paid into and form a Consolidated Fund.

### **WITHDRAWALS FROM CONSOLIDATED FUND OR OTHER PUBLIC FUNDS.**

**91.-**

1. No monies shall be withdrawn from the Consolidated Fund except-
  - a. to meet expenditure that is charged upon the Fund by this Constitution or by any law enacted by Parliament; or
  - b. where the issue of those monies has been authorised by an appropriation law or by a law made in pursuance of section 93 of this Constitution.
2. Where any monies are charged by this Constitution or any law enacted by Parliament upon the Consolidated Fund or any other public fund, they shall be paid out of that fund by the Government to the person or authority to whom payment is due.
3. No monies shall be withdrawn from any public fund other than the Consolidated Fund unless the

issue of those monies has been authorised by or under a law enacted by Parliament.

4. There shall be such provision as may be made by Parliament prescribing the manner in which withdrawals may be made from the Consolidated Fund or any other public fund.
5. The investment of monies forming part of the Consolidated Fund shall be made in such a manner as may be prescribed by or under a law enacted by Parliament.
6. Notwithstanding the provision of subsection (1) of this section, provision may be made by or under a law enacted by Parliament authorising withdrawals to be made from the Consolidated Fund, in such circumstances and to such extent as may be prescribed by or under a law enacted by Parliament, for the purpose of making repayable advances.

## **AUTHORISATION OF EXPENDITURE FROM CONSOLIDATED FUND BY APPROPRIATION LAW.**

**92.-**

1. The Minister for the time being responsible for finance shall cause to be prepared and laid before the House before, or not later than ninety days after, the commencement of each financial year, estimates of the revenues and expenditure of Antigua and Barbuda for that financial year.
2. When the estimates of expenditure (other than expenditure charged upon the Consolidated Fund by this Constitution or by any law enacted by Parliament) have been approved by the House, a bill to be known as an appropriation bill shall be introduced in the House, providing for the issue from the Consolidated Fund of the sums necessary to meet that expenditure and the appropriation of those sums, under separate votes for the several services required, for the purposes specified therein.
3. If in respect of any financial year it is found-
  - a. that the amount appropriated by the appropriation law for any purpose is insufficient or that a need has arisen for expenditure for a purpose to which no amount has been appropriated by that law; or
  - b. that any monies have been expended for any purpose in excess of the amount appropriated for that purpose by the appropriation law or for a purpose to which no amount has been appropriated by that law.- a supplementary estimate showing the sums required or spent shall be laid before the House and, when the supplementary estimate has been approved by the House, a supplementary appropriation bill shall be introduced in the House providing for the issue of such sums from the Consolidated Fund and appropriating them to the purposes specified therein.

## **AUTHORISATION OF EXPENDITURE IN ADVANCE OF APPROPRIATION.**

**93.-** There shall be such provision as may be made by Parliament under which, if the appropriation law in respect of any financial year has not come into operation by the beginning of that financial year, the Minister for the time being responsible for finance may authorise the withdrawal of monies from the Consolidated Fund for the purpose of meeting expenditure necessary to carry on the services of the Government until the expiration of four months from the beginning of that financial year or the coming into operation of the law, whichever is the earlier.

## **CONTINGENCIES FUND.**

**94.-**

1. There shall be such provisions as may be made by Parliament for the establishment of a Contingencies Fund, and for authorising the Minister for the time being responsible for finance, if satisfied that there has arisen an urgent and unforeseen need for expenditure for which no other provision exists, to make advances from that Fund to meet that need.
2. Where any advance is made from the Contingencies Fund, a supplementary estimate shall as soon as possible be laid before the House and when the supplementary estimate has been approved by the House, a supplementary appropriation bill shall be introduced as soon as possible in the House for the purpose of replacing the amount so advanced.

## **REMUNERATION OF CERTAIN OFFICERS.**

**95.-**

1. There shall be paid to the holders of the offices to which this section applies such salaries and such allowances as may be prescribed by or under any law enacted by Parliament.
2. The salaries and allowances prescribed in pursuance of this section in respect of the holders of the offices to which this section applies shall be a charge on the Consolidated Fund.
3. The salary prescribed in pursuance of this section in respect of the holder of any office to which this section applies and his other terms of service (other than allowances that are not taken into account in computing, under any law in that behalf, any pension payable in respect of his service in that office) shall not be altered to his disadvantage after his appointment.
4. When a person's salary or other terms of service depend upon his option, the salary or terms for which he opts shall, for the purposes of subsection (3) of this section, be deemed to be more advantageous to him than any other for which he might have opted.

5. This section applies to the offices of the Governor-General, member of the Public Service Commission, member of the Police Service Commission, member of the Public Service Board of Appeal, the Director of Public Prosecutions, the Director of Audit, the Ombudsman and the Supervisor of Elections.
6. Nothing in this section shall be construed as prejudicing the provisions of section 109 of this Constitution (which protects pensions rights in respect of service as a public officer).

## **PUBLIC DEBT.**

### **96.-**

1. All debt charges for which Antigua and Barbuda is liable shall be a charge on the Consolidated Fund.
2. For the purposes of this section debt charges include interest, sinking fund charges the repayment or amortisation of debt and all expenditure in connection with the raising of loans on the security of the Consolidated Fund and the service and redemption of the debt created thereby.

## **AUDIT OF PUBLIC ACCOUNTS ETC.**

### **97.-**

1. There shall be a Director of Audit whose office shall be a public office.
2. The Director of Audit shall-
  - a. satisfy himself that all monies that have been appropriated by Parliament and disbursed have been applied to the purposes to which they were so appropriated and that the expenditure conforms to the authority that governs it; and
  - b. at least once every year audit and report on the public accounts of Antigua and Barbuda, the accounts of all officers and authorities of the Government, the accounts of all courts of law in Antigua and Barbuda (including any accounts of the Supreme Court maintained in Antigua and Barbuda), the accounts of every Commission established by this Constitution and the accounts of the Clerk to the House and the Clerk to the Senate.
3. The Director of Audit shall have power to carry out audits of the accounts, balance sheets and other financial statements of all enterprises that are owned or controlled by or on behalf of Antigua and Barbuda.
4. The Director of Audit and any other officer authorised by him shall have access to all books, records, returns, reports and other documents which in his opinion relate to any of the accounts referred to in subsections (2) and (3) of this section.

5. The Director of Audit shall submit every report made by him in pursuance of this section to the Minister for the time being responsible for finance who shall, after receiving such report, lay it before the House not later than seven days after the House next meets.
6. If the Minister fails to lay a report before the House in accordance with the provisions of subsection (5) of this section the Director of Audit shall transmit copies of that report to the Speaker who shall, as soon as practicable, present them to the House.
7. The Director of Audit shall exercise such other functions in relation to the accounts of the Government, the accounts of other authorities or bodies established by law for public purposes or the accounts of enterprises that are owned or controlled by or on behalf of Antigua and Barbuda as may be prescribed by or under any law enacted by Parliament.
8. In the exercise of his functions under subsection (2), (3), (4), (5) and (6) of this section, the Director of Audit shall not be subject to the direction or control of any other person or authority.

## **PUBLIC ACCOUNTS COMMITTEE.**

**98.-** The House shall, at the commencement of each session, appoint a Public Accounts Committee from among its members, one of whom shall be a member for Barbuda in the House, whose duties shall be to consider the accounts referred to in section 97(2) of this Constitution in conjunction with the report of the Director of Audit and in particular to report to the House-

- a. in the case of any excess or unauthorised expenditure of public funds the reasons for such expenditure; and
- b. any measures it considers necessary in order to ensure that public funds are properly spent,

- and any other such duties relating to public accounts as the House may from time to time direct.

## **CHAPTER VII THE PUBLIC SERVICE**

### **PART 1 THE PUBLIC SERVICE COMMISSION**

#### **ESTABLISHMENT AND COMPOSITION OF COMMISSION**

**99.-**

1. There shall be a Public Service Commission for Antigua and Barbuda (hereinafter in this section

referred to as the Commission) which shall consist of a chairman and not less than two nor more than six other members who shall be appointed by the Governor-General, acting in accordance with the advice of the Prime Minister:

Provided that the Prime Minister shall consult the leader of the Opposition before tendering any advice to the Governor-General for the purposes of this subsection.

2. A person shall not be qualified to be appointed as a member of the commission if-
  - a. he is a public officer;
  - b. he is a member of either House of Parliament;
  - c. he is below the age of twenty-five years; or
  - d. he is not resident in Antigua and Barbuda.
- a. A member of the Commission shall be appointed to hold office for a term of two years.
- b. Subject to the provisions of this section, the office of a member of the Commission shall become vacant at the expiration of the period for which he was appointed or if any circumstances arise that, if he were not a member of the Commission, would cause him to be disqualified to be appointed as such under subsection (2) of this section.
4. A member of the Commission may be removed from office only for inability to exercise the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and shall not be so removed except in accordance with the provisions of this section.
5. A member of the Commission shall be removed from office by the Governor-General if the question of his removal from office has been referred to a tribunal appointed under subsection (6) of this section and the tribunal has recommended to the Governor-General that he ought to be removed from office for inability as aforesaid or for misbehaviour.
6. If the Prime Minister represents to the Governor-General that the question of removing a member of the Commission under this section ought to be investigated then-
  - a. the Governor-General shall appoint a tribunal which shall consist of a chairman and not less than two other members, selected by the Chief Justice from among persons who hold or have held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from such a court; and
  - b. the tribunal shall enquire into the matter and report on the facts thereof to the Governor-General and recommend to him whether the member ought to be removed under this section.
7. If the question of removing a member of the Commission has been referred to a tribunal under this section, the Governor-General, acting in accordance with the advice of the Prime Minister, may suspend that member from the functions of his office and any such suspension may at any time be revoked by the Governor-General, acting in accordance with such advice as aforesaid, and shall in any case cease to have effect if the tribunal recommends to the Governor-General that the member should not be removed.

8. If the office of chairman of the Commission is vacant or if the person holding that office is for any reason unable to exercise the functions of his office, then, until a person has been appointed to and has assumed the functions of that office or until the person holding that office has resumed those functions, as the case may be, they shall be exercised by such one of the other members of the Commission as may for the time being be designated in that behalf by the Governor-General, acting in accordance with the advice of the Prime Minister.
9. If at any time any member of the Commission is for any reason unable to exercise the function of his office, the Governor-General, acting in accordance with the advice of the Prime Minister, may appoint a person who is qualified to be appointed as a member of the Commission to act as a member, and any person so appointed shall, subject to the provisions of subsections (6) and (7) of this section, continue to act until the office in which he is acting has been filled or, as the case may be, until the holder thereof has resumed his functions or until his appointment to act has been revoked by the Governor-General, acting in accordance with the advice of the Prime Minister:

Provided that the Prime Minister shall consult the Leader of the Opposition before tendering any advice to the Governor-General for the purposes of this subsection and of subsection (8) of this section.

10. A member of the Commission shall not enter upon the duties of his office until he has taken and subscribed the oath of allegiance and the oath of office.
11. The Commission shall, in the exercise of its functions under this Constitution, not be subject to the direction or control of any other person or authority.
12. The Commission may, by regulation or otherwise, regulate its own procedure.
13. The Commission may, with the consent of the Prime Minister, confer powers or impose duties on any public officer or on any authority of the Government for the purpose of the exercise of its functions.
14. The Commission may, subject to its rules of procedure, act notwithstanding any vacancy in its membership or the absence of any member and its proceedings shall not be invalidated by the presence or participation of any person not entitled to be present at or to participate in those proceedings:

Provided that any decision of the Commission shall require the concurrence of a majority of all its members.

15. The Commission shall make an annual report on its activities to the Governor-General, who shall cause copies of the report to be laid before both Houses of Parliament.

## **APPOINTMENT ETC. OF PUBLIC OFFICERS**

### **100.-**

1. Subject to the provisions of this Constitution, the power to appoint persons to hold or act in offices in the public service (including the power to make appointments on promotion and transfer and to confirm appointments), the power to exercise disciplinary control over persons holding or acting in such offices and the power to remove such persons from office shall vest in the Public Service Commission.
2. The Public Service Commission may with the approval of the Prime Minister by directions in writing and subject to such conditions as it thinks fit, delegate any of its powers under subsection (1) of this section to any one or more members of the Commission or to any public officer.
3. The provisions of this section shall not apply in relation to the following offices, that is to say-
  - a. any office to which section 101 of this Constitution applies;
  - b. the office of the Director of Public Prosecutions;
  - c. the office of the Director of Audit;
  - d. the office of the Attorney-General;
  - e. the office of the Supervisor of Elections;
  - f. any office to which section 103 of this Constitution applies;
  - g. any office in the Police Force.
4. No person shall be appointed under this section to, or to act in, any office of the Governor-General's personal staff except with the concurrence of the Governor-General acting in his discretion.
5. The Public Service Commission shall not remove or inflict any punishment on a public officer on the grounds of any act done or omitted to be done by that officer in the exercise of a judicial function conferred upon him unless the Judicial and Legal Services Commission concurs therein.
6. In the performance of its functions the Public Service Commission shall act in a manner consistent with the general policy of the Government as conveyed to the Commission by the Prime Minister in writing.

## **APPOINTMENT ETC. OF PERMANENT SECRETARIES AND CERTAIN OTHER OFFICERS**

### **101.-**

1. This section applies to the offices of Secretary to the Cabinet, Permanent Secretary, head of a department of government, deputy head of a department of government, any office of a chief professional adviser to a department of government and any office for the time being designated

by the Commission, after consultation with the Prime Minister, as an office the holders of which are required to reside outside Antigua and Barbuda for the proper discharge of their functions or as an office in Antigua and Barbuda whose functions relate to external affairs.

2. The power to appoint persons to hold or to act in offices to which this section applies (including the power to confirm appointments), and, subject to the provisions of section 107 of this Constitution, the power to exercise disciplinary control over persons holding or acting in such offices and power to remove such persons from office shall vest in the Governor-General, acting in accordance with the advice of the Public Service Commission:

Provided that-

- a. the power to appoint a person to hold or act in an office of permanent secretary on transfer from another such office carrying the same salary shall vest in the Governor-General, acting in accordance with the advice of the Prime Minister;
  - b. before the Public Service Commission tenders advice to the Governor-General with respect to the appointment of any person to hold an office to which this section applies (other than appointment to an office of permanent secretary on transfer from another such office carrying the same salary) it shall consult with the Prime Minister and if the Prime Minister signifies his objection to the appointment of any person to the office, the Commission shall not advise the Governor-General to appoint that person;
  - c. in relation to any office of Ambassador, High Commissioner or other principal representative of Antigua and Barbuda in any other country or accredited to any international organisation the Governor-General shall act in accordance with the advice of the Prime Minister, who shall, before tendering any such advice in respect of any person who holds any public office to which appointments are made by the Governor-General on the advice of or after consultation with some other person or authority, consult that person or authority.
3. References in this section to a department of government shall not include the office of the Governor-General, the department of the Attorney-General, the department of the Director of Public Prosecutions, the department of the Director of Audit, the department of the Supervisor of Elections, the department of the Clerk of the Senate or of the House or the Police Force.

## **THE DIRECTOR OF AUDIT**

**102.-**

1. The Director of Audit shall be appointed by the Governor-General acting in accordance with the advice of the Public Service Commission, tendered after the Commission has consulted the Prime Minister and has obtained the agreement of the Prime Minister to the appointment of that person.

2. If the office of Director of Audit is vacant or if the holder of the office is for any reason unable to exercise the functions of his office, the Governor-General, acting in accordance with the advice of the Public Service Commission tendered after the Commission has consulted the Prime Minister and has obtained the agreement of the Prime Minister to the appointment, may appoint a person to act as Director of Audit.
3. The provisions of subsections (5) to (11) inclusive of section 87 of this Constitution (which relates to the appointment and removal of the Director of Public Prosecutions) shall apply in relation to the Director of Audit as they apply in relation to the Director of Public Prosecutions so, however, that in subsection (9) and (10) references to the Judicial and Legal Services Commission shall be read as references to the Public Service Commission.

## **APPOINTMENT ETC. OF MAGISTRATES, REGISTRARS AND LEGAL OFFICERS**

### **103.-**

1. This section applies to the offices of magistrates and registrars of the High Court and assistant registrars of the High Court and to any public office in the department of the Attorney-General (other than the public office of Attorney-General) and the department of the Director of Public Prosecutions (other than the office of Director) for appointment to which persons are required to be qualified to practice as a barrister or solicitor in Antigua and Barbuda and such other offices connected with the Court as Parliament may prescribe.
2. The power to appoint persons to hold or act in offices to which this section applies (including the power to confirm appointments) and, subject to the provisions of this Constitution, the power to exercise disciplinary control over persons holding or acting in such offices and the power to remove such persons from office shall vest in the Governor-General acting in accordance with the advice of the Judicial and Legal Services Commission.

## **PART 2**

### **THE POLICE SERVICE COMMISSION**

#### **ESTABLISHMENT AND COMPOSITION OF COMMISSION**

### **104.-**

1. There shall be a Police Service Commission for Antigua and Barbuda which shall consist of a Chairman and not less than two nor more than six other members who shall be appointed by the Governor-General acting in accordance with the advice of the Prime Minister:

Provided that the Prime Minister shall consult the Leader of the Opposition before tendering any advice to the Governor-General for the purposes of this subsection.

2. The provisions of subsections (2) to (15) inclusive of section 99 of this Constitution shall apply in relation to the Police Service Commission as they apply in relation to the Public Service Commission.

## **APPOINTMENT ETC. OF POLICE OFFICERS**

### **105.-**

1. Subject to the provision of this section, the power to appoint persons to hold or act in offices in the Police Force (including appointments on promotion and transfer and the confirmation of appointments) and to remove and exercise disciplinary control over persons holding or acting in such offices shall vest in the Police Service Commission:

Provided that the Commission may, with the approval of the Prime Minister and subject to such conditions as it may think fit, delegate any of its powers under this section to any one or more of its members or to the Commissioner of Police.

2. Before the Police Service Commission, or any person or authority to whom powers have been delegated under this section, appoints to an office in the Police force any person who is holding or acting in an office power to make appointments to which is vested by this Constitution in the Public Service Commission, the Police Service Commission or that person or authority shall consult with the Public Service Commission.
3. Before the Police Service Commission makes an appointment to the office of Commissioner or Deputy Commissioner or a like post however designated it shall consult the Prime Minister, and a person shall not be appointed to such an office if the Prime Minister, and a person shall not be appointed to such an office if the Prime Minister signifies to the Police Service Commission his objection to the appointment of that person to the office in question.
4. Before the Police Service Commission makes an appointment to the office of Superintendent or a like post however designated it shall consult the Prime Minister.
5. The power to appoint persons to hold or act in offices in the Police Force below the rank of Sergeant (including the power to confirm appointments) and, subject to the provisions of section 107 of this Constitution, the power to exercise disciplinary control over persons holding or acting in such offices and the power to remove such person from office shall vest in the Commissioner of Police.
6. The Commissioner of Police may, by directions given in such manner as he thinks fit and subject to such conditions as he thinks fit, delegate any of his powers under subsection (5) of this section, other than the power to remove from office or reduce in rank, to any other member of the Police Force.

7. A police officer shall not be removed from office or subjected to any other punishment under this section on the grounds of any act done or omitted by him in the exercise of any judicial function conferred on him unless the Judicial and Legal Services Commission concurs therein.
8. In this section references to the rank of Sergeant shall, if the ranks within the Police Force are altered (whether in consequence of the re-organisation or replacement of an existing part of the Force or the creation of an additional part), be construed as references to such rank or ranks as may be specified by the Police Service Commission by Order published in the Official Gazette, being a rank or ranks that in the opinion of the Commissioner most nearly correspond to the rank of Sergeant as it existed before the alteration.

### **PART 3**

#### **THE PUBLIC SERVICE BOARD OF APPEAL**

#### **CONSTITUTION OF BOARD, ETC.**

#### **106.-**

1. There shall be a Public Service Board of Appeal for Antigua and Barbuda (in this Part referred to as the Board) which shall consist of-
  - a. a chairman appointed by the Governor-General acting in his discretion;
  - b. two members appointed by the Governor-General acting in accordance with the advice of the Prime Minister who shall, before tendering that advice to the Governor-General, consult with the Leader of the Opposition;
  - c. one member appointed by the Governor-General after consultation with the appropriate bodies representing the public service; and
  - d. one member appointed by the Governor-General after consultation with the appropriate body representing members of the Police Force.
2. The provisions of subsections (2) to (8) inclusive of section 99 of this Constitution shall apply in relation to the Board as they apply in relation to the Public Service Commission except that, in so applying subsection (8) of that section, the provision whereby the Governor-General acts in accordance with the advice of the Prime Minister shall be read as a provision whereby the Governor-General acts in his discretion.
3. If at any time any member of the Board is for any reason unable to exercise the functions of his office, the Governor-General, acting in accordance with the advice of the person upon whose advice that member was appointed or, as the case may be, after consultation with the body that he had consulted before appointing that member, may appoint a person who is qualified to be appointed as a member of the Board to act as a member, and any person so appointed shall continue to act until the office in which he is acting has been filled or, as the case may be, until the holder thereof has resumed his functions or until his appointment to act has been revoked by the

Governor-General acting in accordance with such advice or, as the case may be, after such consultation as above in this subsection:

Provided that the Prime Minister shall consult the Leader of the Opposition before tendering any advice to the Governor-General under this subsection in respect of the appointment of any person to act for any member of the commission appointed under paragraph (b) of the subsection (1) of this section.

4. The Board shall, in the exercise of its functions under this Constitution, not be subject to the direction or control of any other person or authority.

5. In this section-

"the appropriate bodies representing the public service" means the Antigua and Barbuda Civil Service Association or such other body representing the interests of public officers as the Governor-General may designate;

"the appropriate body representing members of the Police Force" means the Police Welfare Association or such other body representing the interests of members of the Police Force as the Governor-General may designate.

## **APPEALS IN DISCIPLINARY CASES.**

### **107.-**

1. This section applies to-

- a. any decision of the Governor-General acting in accordance with the advice of the Public Service Commission, or any decision of the Public Service Commission, to remove a public officer from office or to exercise disciplinary control over a public officer (including a decision made on appeal from or confirming a decision of any person to whom powers are delegated under section 100(2) of this Constitution);
- b. any decision of any person to whom powers are delegated under section 100(2) of this Constitution to remove a public officer from office or to exercise disciplinary control over a public officer (not being a decision which is subject to appeal to or confirmation by the Public Service Commission);
- c. any decision of the Public Service Commission to give such concurrence as is required by section 110(1) or (2) of this Constitution in relation to the refusal, withholding, reduction in amount or suspending of any pensions benefits in respect of an officer's service as a public officer;
- d. any decision of the Police Service Commission to remove a member of the Police Force from office or to exercise disciplinary control over such a member under section 105(1) of this Constitution;

- e. if it is so provided by Parliament, any decision of the Commissioner of Police under subsection (5) of section 105 of this Constitution, or of a person to whom powers are delegated under subsection (6) of that section, to remove a police officer from office or to exercise disciplinary control over a police officer;
  - f. such decisions with respect to the discipline of any military, naval or air force of Antigua and Barbuda as may be prescribed by Parliament.
2. Subject to the provisions of this section an appeal shall lie to the Board from any decision to which this section applies at the instance of the public officer, police officer or member of the naval, military or air force in respect of whom the decision is made:

Provided that in the case of any such decision as is referred to in subsection (1) (e) if this section, an appeal shall lie in the first instance to the Police Service Commission if it is so provided by Parliament, in which case the Commission shall have the like powers as are conferred on the Board by subsection (1) of section 108 of this Constitution.

## **POWERS AND PROCEDURE OF BOARD.**

### **108.-**

1. Upon an appeal under section 107 of this Constitution or any law enacted in pursuance of that section, the Board may affirm or set aside the decision appealed against or make any other decision which the authority or person from which the appeal lies could have made.
2. Every decision of the Board shall require the concurrence of a majority of all the members of the Board entitled to participate in the proceedings of the Board for the purpose of making that decision.
3. Subject to the provisions of subsection (2) of this section, the Board may by regulation make provision for-
  - a. the procedure of the Board;
  - b. the procedure in appeals under this Part;
  - c. excepting from that provisions of section 107(1) of this Constitution decisions in respect of public officers holding offices whose emoluments do not exceed such sums as may be prescribed by the regulations or such decisions to exercise disciplinary control, other than decisions to remove from office, as may be so prescribed.
4. Regulations made under this section may, with the consent of the Prime Minister, confer powers or impose duties on any public officer or any authority of the Government for the purpose of the exercise of the functions of the Board.
5. The Board may, subject to the provisions of this section and to its rules of procedure, act

notwithstanding any vacancy in its membership or the absence of any member.

## **PART 4 PENSIONS**

### **PENSIONS LAWS AND PROTECTION OF PENSIONS RIGHTS.**

#### **109.-**

1. The law to be applied with respect to any pensions benefits that were granted to any person before 1st November 1981 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. The law to be applied with respect to any pensions benefits (not being benefits to which subsection (1) of this section applies) shall-
  - a. in so far as those benefits are wholly in respect of a period of service as a judge or officer of the Supreme Court or a public officer that commenced before 1st November 1981, be the law that was in force on that date; and
  - b. in so far as those benefits are wholly or partly in respect of a period of service as a judge or officer of the Supreme Court or a public office that commenced after 31st October 1981, be the law in force on the date on which that period of service commenced, or any law in force at a later date that is not less favourable to that person.
3. Where a person is entitled to exercise an option as to which of two or more laws shall apply in his case, the law for which he opts shall for the purposes of this section, be deemed to be more favourable to him than the other law or laws.
4. All pensions 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.
5. In this section "pensions benefits" means any pensions, compensations, gratuities or other like allowances for persons in respect of their service as judges or officers of the Supreme Court or public officers or for the widows, children, dependants or personal representatives of such persons in respect of such service.
6. References in this section to the law with respect to pensions benefits include (without prejudice to their generality) references to the law regulating the circumstances in which such benefits may be granted or in which the grant of such benefits may be refused, the law regulating the circumstances in which such benefits that have been granted may be withheld, reduced in amount or suspended and the law regulating the amount of any such benefits.
7. In this section references to service as a judge are references to service as a judge of the Supreme

Court and references to service as a public officer include service in an office established under section 12 of the Supreme Court Order.

## **POWER TO WITHHOLD PENSIONS ETC.**

### **110.-**

1. Where under any law any person or authority has a discretion-
  - a. to decide whether or not any pensions benefits shall be granted; or
  - b. to withhold, reduce in amount or suspend any such benefits that have been granted, those benefits shall be granted and may not be withheld, reduced in amount or suspended unless the Public Service Commission concurs in the refusal to grant the benefits or, as the case may be, in the decision to withhold them, reduce them in amount or suspend them.
2. Where the amount of any pensions benefits that may be granted to any person is not fixed by law, the amount of the benefits to be granted to him shall be the greatest amount for which he is eligible unless the Public Service Commission concurs in his being granted benefits of a smaller amount.
3. The Public Service Commission shall not concur under subsection (1) or subsection (2) of this section in any action taken on the ground that any person who holds or has held the office of a judge of the Supreme Court, Director of Public Prosecutions or Director of Audit or Supervisor of Elections has been guilty of misbehaviour in that office unless he has been removed from that office by reason of such misbehaviour.
4. Before the Public Service Commission concurs under subsection (1) or subsection (2) of this section in any action taken on the ground that any person (who holds or has held any office to which, at the time of such action, section 103 of this Constitution applies) has been guilty of misbehaviour in that office, the Public Service Commission shall consult the Judicial and Legal Services Commission.
5. In this section "pensions benefits" means any pensions, compensations, gratuities or other like allowances for persons in respect of their service as judges or officers of the Supreme Court or public officers or for the widows, children, dependants or personal representatives of such persons in respect of such service.
6. In this section references to service as a public officer include service in an office established under section 12 of the Supreme Court Order.

## **CHAPTER VIII CITIZENSHIP**

### **BELONGER STATUS.**

**111.-** On and after 1st November 1981 a person shall, for the purposes of any law, be regarded as belonging to Antigua and Barbuda if, and only if, he is a citizen.

**PERSONS WHO AUTOMATICALLY BECOME CITIZENS AT COMMENCEMENT OF THIS CONSTITUTION.**

**112.-** The following persons shall become citizens on 1st November 1981-

- a. every person who, having been born in Antigua, was on 31st October 1981, a citizen of the United Kingdom and Colonies;
- b. every person born outside Antigua if either of his parents or any one of his grandparents was born therein or was registered or naturalised while resident in Antigua;
- c. every person who on 31st October 1981 was a citizen of the United Kingdom and Colonies-
  - i. having become such a citizen under the British Nationality Act 1948 by virtue of his having been naturalised while resident in Antigua as a British subject before the Act came into force; or
  - ii. having while resident in Antigua become such a citizen by virtue of his having been naturalised or registered under that Act;
- d. every person who, having been born outside Antigua was on 31st October 1981 a citizen of the United Kingdom and Colonies and if his father or mother becomes, or would but for his or her death or the renunciation of his or her citizenship of the United Kingdom and Colonies have becomes, a citizen by virtue of paragraph (a), (b) or (c) of this section;
- e. every woman who, having been married to a person who becomes, or but for his death or the renunciation of his citizenship of the United Kingdom and Colonies, would have become a citizen by virtue of paragraph (a), (b), (c) or (d) of this section, was a citizen of the United Kingdom and Colonies on 31st October 1981;
- f. every person who on 31st October 1981 was under the age of eighteen years and is the child, stepchild, or child adopted in a manner recognised by law, of such a person as is mentioned in any of the preceding paragraphs of this section.

**PERSONS WHO AUTOMATICALLY BECOME CITIZENS AFTER COMMENCEMENT OF THIS CONSTITUTION.**

**113.-** The following persons shall become citizens at the date of their birth on or after 1st November 1981-

- a. every person born in Antigua and Barbuda:  
Provided that a person shall not become a citizen by virtue of this paragraph if at the time of his birth-
  - i. neither of his parents is a citizen and either of them possess such immunity from suit and legal process as is accorded to the envoy of a foreign sovereign power accredited to Antigua and Barbuda; or

- ii. either of his parents is a citizen of a country with which Her Majesty is at war and the birth occurs in a place then under occupation by that country;
- b. every person born outside Antigua and Barbuda if at the date of his birth either of his parents is or would have been but for that parent's death, a citizen by virtue of section 112 of this Constitution or paragraph (a) of this section;
- c. every person born outside Antigua and Barbuda if at the date of his birth either of his parents is, or would have been but for that parent's death, a citizen employed in service under the Government or under an authority of the Government that requires him or her to reside outside Antigua and Barbuda for the proper discharge of his or her functions.

## **PERSONS ENTITLED TO CITIZENSHIP BY REGISTRATION AFTER COMMENCEMENT OF THIS CONSTITUTION.**

### **114.-**

- 1. Subject to the provisions of paragraph (e) of section 112 and of section 117 of this Constitution, the following persons shall be entitled, upon making application, to be registered on or after 1st November 1981-
  - a. any person who, on 31st October 1981-
    - i. was married to a person who becomes a citizen by virtue of section 112 of this Constitution; or
    - ii. was married to a person who, having died before 1st November 1981, would have but for his or her death, become a citizen by virtue of that section:

Provided that such person is not, or was not at the time of the death of the spouse, living apart from the spouse under a decree of a competent court or a deed of separation;

- b. any person who-
  - i. was married to a person who is or becomes a citizen; or
  - ii. was married to a person who was or, but for his or her death, would have become a citizen:

Provided that no application shall be allowed from such person before the marriage has subsisted for upwards of three years and that such person is not, or was not at the time of the death of the spouse, living apart from the spouse under a decree of a competent court or a deed of separation;

- i. every person being a Commonwealth citizen who on 31st October 1981 was domiciled in Antigua and had been ordinarily resident therein for a period of not less than seven years preceding that day;
- ii. any person who being a Commonwealth citizen is domiciled in Antigua and

Barbuda and has for a period of not less than seven years immediately preceding his application been lawfully ordinarily resident in Antigua and Barbuda (whether or not that period commenced before 1st November 1981);

- d. any person who, but for having renounced his citizenship of the United Kingdom and Colonies in order to qualify for the acquisition or retention of the citizenship of another country, would have become a citizen on 1st November 1981;
- e. any person who, having been a citizen, had to renounce his citizenship in order to qualify for the acquisition or retention of the citizenship of another country;
- f. any person under the age of eighteen years who is the child, stepchild or child adopted in a manner recognised by law of a citizen or is the child, stepchild or child so adopted of a person who is or would but for his death have been entitled to be registered as a citizen under this subsection.

2. An application under this section shall be made in such manner as may be prescribed as respects that application by or under a law enacted by Parliament and, in the case of a person to whom subsection (1) (f) of this section applies, it shall be made on his behalf by his parent or guardian:

provided that if the person to whom subsection (1) (f) of this section applies is or has been married, the application may be made by that person.

## **DUAL CITIZENSHIP**

### **115.-**

1. A person, who on 1st November 1981, is a citizen or entitled to be registered as such and is also a citizen of some other country or entitled to be registered as such shall not solely on the ground that he is or becomes a citizen of that country, be-
  - a. deprived of his citizenship;
  - b. refused registration as a citizen; or
  - c. required to renounce his citizenship of that other country, by or under any law.
2. A person referred to in subsection (1) of this section shall not-
  - a. be refused a passport of Antigua and Barbuda or have such a passport withdrawn, cancelled, or impounded solely on the ground that he is in possession of a passport issued by some other country of which he is a citizen; or
  - b. be required to surrender or be prohibited from acquiring a passport issued by some other country of which he is a citizen before being issued with a passport of Antigua and Barbuda or as a condition of retaining such a passport.

## **POWERS OF PARLIAMENT.**

### **116.-**

1. Without prejudice to and subject to the provisions of sections 11, 112, 113, 114 and 115 of this Constitution, Parliament may, pursuant to the provisions of this section, make provision for the acquisition of citizenship by registration.
2. An application for registration under this section may be refused by the Minister responsible for the matter in any case in which he is satisfied that there are reasonable grounds for refusing the application in the interests of defence, public safety, public morality or public order.
3. There shall be such provision as may be made by Parliament-
  - a. for the acquisition of citizenship of Antigua and Barbuda by persons who are not eligible or who are no longer eligible to become citizens under the provisions of this Chapter;
  - b. for the renunciation by any person of his citizenship;
  - c. for the certification of citizenship for persons who had acquired that citizenship and who desire such certification; and
  - d. for depriving of his citizenship any person who is a citizen by virtue of registration if such registration as a citizen was obtained by false representation or fraud or wilful concealment of material facts or if he is convicted in Antigua and Barbuda of an act of treason or sedition;

Provided that any law enacted for the purposes of paragraph (d) of this section shall include provisions under which the person concerned shall have a right of appeal to a court of competent jurisdiction or other independent authority and shall be permitted to have legal representation of his own choice.

## **OATH OF ALLEGIANCE.**

**117.-** Any person not already owing allegiance to the Crown who applies for registration under section 114 of this Constitution shall before such registration, take the oath of allegiance.

## **INTERPRETATION.**

**118.-**

1. Any reference in this Chapter to the national status of the father of a person at the time of that person's birth shall, in relation to a person born after the death of his father, be construed as a reference to the national status of the father at the time of the father's death; and where that death occurred before 1st November 1981 the national status that the father would have had if he had died on that day shall be deemed to be his national status at the time of his death:

Provided that in the case of a child born out of wedlock references to the mother shall be substituted for such references to the father.

2. In this Chapter-

"child" includes a child born out of wedlock and not legitimated;

"father", in relation to a child born out of wedlock and not legitimated, includes a person who acknowledges and can show that he is the father of the child or has been found by a court of competent jurisdiction to be the father of the child;

"parent" includes the mother of a child born out of wedlock.

3. For the purposes of this Chapter, a person born aboard a registered ship or aircraft of the government of any country, shall be deemed to have been born in the place in which the ship or aircraft was registered or, as the case may be, in that country.

## **CHAPTER IX JUDICIAL PROVISIONS**

### **ORIGINAL JURISDICTION, HIGH COURT CONSTITUTION QUESTIONS.**

#### **119.-**

1. Subject to the provisions of sections 25(2), 47(8)(b), 56(4), 65(5), 124(7)(b) and 124 of this Constitution, any person who alleges that any provision of this Constitution (other than a provision of Chapter II) has been or is being contravened may, if he has a relevant interest, apply to the High Court for a declaration and for relief under this section.
2. The High Court shall have jurisdiction on an application made under this section to determine whether any provision of this Constitution (other than a provision of Chapter II) has been or is being contravened and to make a declaration accordingly.
3. Where the High Court makes a declaration under this section that a provision of this Constitution has been or is being contravened and the person on whose application the declaration is made has also applied for relief, the High Court may grant to that person such remedy as it considers appropriate, being a remedy available generally under any law in proceedings in the High Court.
4. The Chief Justice may make provision, or authorise the making of provision, with respect to the practice and procedure of the High Court in relation to the jurisdiction and powers conferred on the court by or under this section, including provision with respect to the time within which any application under this section may be made.
5. A person shall be regarded as having a relevant interest for the purpose of an application under this

section only if the contravention of this Constitution alleged by him is such as to affect his interests.

6. The rights conferred on a person by this section to apply for a declaration and relief in respect of an alleged contravention of this Constitution shall be in addition to any other action in respect of the same matter that may be available to that person under any other law or any rule of law.
7. Nothing in this section shall confer jurisdiction on the High Court to hear or determine any such question as is referred to in section 44 of this Constitution.

## **REFERENCE OF CONSTITUTIONAL QUESTIONS TO HIGH COURT.**

### **120.-**

1. Where any question as to the interpretation of this Constitution arises in any court of law established for Antigua and Barbuda (other than the Court of Appeal, the High Court or a court-martial) and the court is of the opinion that the question involves a substantial question of law, the court may, and shall if any party to the proceedings so requests, refer the question to the High Court.
2. Where any question is referred to the High Court in pursuance of this section, the High Court shall give its decision upon the question and the court in which the question arose shall dispose of the case in accordance with that decision or, if the decision is the subject of an appeal to the Court of Appeal or Her Majesty in Council, in accordance with the decision of the Court of Appeal or, as the case may be, Her Majesty in Council.

## **APPEALS TO COURT OF APPEAL.**

**121.-** Subject to the provisions of section 44 of this Constitution, an appeal shall lie from decisions of the High Court to the Court of Appeal as of right in the following cases-

- a. final decisions in any civil or criminal proceedings on questions as to the interpretation of this Constitution;
- b. final decisions given in exercise of the jurisdiction conferred on the High Court by section 18 of this Constitution (which relates to the enforcement of the fundamental rights and freedom); and
- c. such other cases as may be prescribed by Parliament.

## **APPEALS TO HER MAJESTY IN COUNCIL.**

### **122.-**

1. An appeal shall lie from decisions of the Court of Appeal to Her Majesty in Council as of right in

the following cases-

- a. final decisions in any civil proceedings where the matter in dispute on the appeal to Her Majesty in Council is of the prescribed value or upwards or where the appeal involves directly or indirectly a claim to or question respecting property or a right of the prescribed value or upwards;
- b. final decisions in proceedings for dissolution or nullity of marriage;
- c. final decisions in any civil or criminal proceedings which involve a question as to the interpretation of this Constitution; and
- d. such other cases as may be prescribed by Parliament.

2. Subject to the provision of section 44(8) of this Constitution, an appeal shall lie from decisions of the Court of Appeal to Her Majesty in Council with the leave of the Court of Appeal in the following cases-

- a. decisions in any civil proceedings where in the opinion of the Court of Appeal 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 Her Majesty in Council; and
- b. such other cases as may be prescribed by Parliament.

3. An appeal shall lie to Her Majesty in Council with the special leave of Her Majesty from any decision of the Court of Appeal in any civil or criminal matter.

4. Reference in this section to decisions of the Court of Appeal shall be construed as references to decisions of the Court of Appeal in exercise of the jurisdiction conferred upon that court by this Constitution or any other law for the time being in force.

5. In this section the prescribed value means the value of fifteen hundred dollars or such other value as may be prescribed by Parliament.

## **CHAPTER X MISCELLANEOUS**

### **LOCAL GOVERNMENT.**

**123.-**

1. There shall be a Council for Barbuda which shall be the principal organ of local government in that island.
2. The Council shall have such membership and functions as Parliament may prescribe.

3. Parliament may alter any of the provisions of the Barbuda Local Government Act, 1976, specified in schedule 2 to this Constitution (which provisions are in this section referred to as "the said provisions") in the manner specified in the following provisions of this section and in no other manner whatsoever.
4. A bill to alter any of the said provisions shall not be regarded as being passed by the House unless after its final reading in that House the bill is referred to the Barbuda Council by the Clerk, of the House and the Barbuda Council gives its consent to the bill by resolution of the Council, notice of which shall forthwith be given by the Council to the Clerk of the House.
5. An amendment made by the Senate to such a bill as is referred to in subsection (4) of this section which bill has been passed by the House and consented to by the Barbuda Council shall not be regarded as being agreed to by the House for the purpose of section 55 of this Constitution unless the Barbuda Council signifies to the Clerk of the House the consent by resolution of the Barbuda Council to that amendment.
6. For the purpose of section 55 (4) of this Constitution, an amendment of a bill to alter any of the said provisions shall not be suggested to the Senate by the House unless the Barbuda Council signifies to the Clerk of the House the consent by resolution of the Barbuda Council for the House so to suggest the amendment.
  - a. A bill to alter any of the said provisions shall not be submitted to the Governor-General for his assent unless it is accompanied by a certificate under the hand of the Speaker (or, if the Speaker is for any reason unable to exercise the functions of his office, the Deputy Speaker) that the provisions of subsection (4), (5) or (6), as the case may be, of this section have been complied with.
  - b. The certificate of the Speaker or, as the case may be, the Deputy Speaker, under this subsection shall be conclusive that the provisions of subsection (4), (5) or (6), as the case may be, of this section have been complied with and shall not be enquired into in any court of law.

### **CERTAIN QUESTIONS NOT TO BE ENQUIRED INTO IN ANY COURT.**

**124.-** Where by this Constitution the Governor-General is required to perform any function in accordance with the advice of the Cabinet, the Prime Minister or any other Minister or the Leader of the Opposition or any other person, body or authority or after consultation with any person, body or authority, the question whether the Governor-General has received or acted in accordance with such advice, or whether such consultation has taken place, shall not be enquired into in any court of law.

### **RESIGNATIONS.**

**125.-**

1. Any person who is appointed or elected to any office established by this Constitution may resign from that office by writing under his hand addressed to the person or authority by whom he was appointed or elected;

Provided that-

- a. The resignation of a person from the office of President or Vice-President or from the office of Speaker or Deputy Speaker shall be addressed to the Senate or the House, as the case may be, and
  - b. the resignation of any person from membership of the Senate or the House shall be addressed to the President or the Speaker, as the case may be.
2. The resignation of any person from any such office as aforesaid shall take effect when the writing signifying the resignation is received by the person or authority to whom it is addressed or any person authorised by that person or authority to receive it.

## **REAPPOINTMENTS AND CONCURRENT APPOINTMENTS.**

**126.-**

1. Where any person has vacated any office established by this Constitution or any office of Minister established under this Constitution, he may, if qualified, again be appointed or elected to that office in accordance with the provisions of this Constitution.
2. Where this Constitution vests in any person or authority the power to make any appointment 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 the 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 upon the holder of that office, the person last appointed shall be deemed to be the sole holder of the office.

## **INTERPRETATION.**

**127.-**

1. In this Constitution, unless the context otherwise requires-

"citizen" means a citizen of Antigua and Barbuda and "citizenship" shall be construed accordingly;

"Commonwealth citizen" has such meaning as Parliament may by law prescribe;

"dollars" means dollars in the currency of Antigua and Barbuda;

"financial year" means any period of twelve months beginning on 1st January in any year or such other date as Parliament may prescribe;

"the Government" means the Government of Antigua and Barbuda;

"the House" means the House of Representatives;

"law" means any law in force in Antigua and Barbuda or any part thereof, including any instrument having the force of law and any unwritten rule of law and "lawful" and "lawfully" shall be construed accordingly;

"Minister" means a Minister of the Government;

"oath" includes affirmation;

"oath of allegiance" means the oath of allegiance set out in schedule 3 to this Constitution;

"oath of office" means, in relation to any office, the oath for the due execution of that office set out in schedule 3 to this Constitution;

"oath of secrecy" means the oath of secrecy set out in schedule 3 to this Constitution;

"Parliament" means the Parliament of Antigua and Barbuda;

"the Police Force" means the Police Force established by the Police Act(a) and includes any other police force established by or under a law enacted by Parliament to succeed to or to supplement the functions of the Police Force;

"President" and "Vice-President" means the respective persons holding office as President and Vice-President of the Senate;

"public office" means any office of emolument in the public service and includes an office of emolument in the Police Force;

"public officer" means a person holding or acting in any public office and includes an officer or member of the Police Force;

"the public service" means, subject to the provisions of this section, the service of the Crown in a civil capacity in respect of the government of Antigua and Barbuda;

"session" means the period beginning when the Senate or the House first meets after any prorogation or dissolution of Parliament and ending when Parliament is prorogued or is dissolved without having been prorogued;

"sitting" means in relation to either House of Parliament the period during which the House is sitting continuously without adjournment and includes any period during which it is in committee;

"Speaker" and "Deputy Speaker" means the respective persons holding office as Speaker and Deputy Speaker of the House;

2. In this Constitution references to an office in the public service shall not be construed as including-
  - a. references to the office of President or Vice-President, Speaker or Deputy Speaker, Prime Minister or any other Minister, Parliamentary Secretary, member of either House of Parliament or the Ombudsman;
  - b. references to the office of a member of any Commission established by this Constitution or a member of the Advisory Committee on the Prerogative of Mercy or a member of the Public Service Board of Appeal;
  - c. references to the office of a judge or officer of the Supreme Court;
  - d. save in so far as may be provided by Parliament, references to the office of a member of any council, board, panel, committee or other similar body (whether incorporated or not) established by or under any law.
3. In this Constitution-
  - a. references to this Constitution, the Supreme Court Order, the British Nationality Act 1948 or the Barbuda Local Government Act, 1976, or any provision thereof, include references to any law altering this Constitution or that Order, Act or provision, as the case may be;
  - b. references to the Supreme Court, the Court of Appeal, the High court and the Judicial and Legal Services Commission are references to the Supreme Court, the Court of Appeal, the High Court and the Judicial and Legal Services Commission established by the Supreme Court Order;
  - c. references to the Chief Justice have the same meaning as in the Supreme Court Order;
  - d. references to a judge of the Supreme Court are references to a judge of the High Court or Court of Appeal and, unless the context otherwise requires, includes references to a judge of the former Supreme Court of the Windward Islands and Leeward Islands; and
  - e. references to officers of the Supreme Court are references to the Chief Registrar and other officers of the Supreme court appointed under the Supreme Court Order.
4. For the purpose of this Constitution, a person shall not be regarded as holding an office by reason only of the fact that he is in receipt of a pension or other like allowance in respect of his former tenure of any office.

5. In this Constitution , unless the context otherwise requires, a reference to the holder of an office by the term designating his office shall be construed as including, to the extent of his authority, a reference to any person for the time being authorised to exercise the functions of that office.
6. Except in the case where this Constitution provides for the holder of any office thereunder to be such person holding or acting in any other office as may for the time being be designated in that behalf by some other specified person or authority , no person may, without his consent, be nominated for election to any such office or be appointed to or to act therein or otherwise be selected therefor.
7. References in this Constitution to the power to remove a public officer from his office shall be construed as including references to any power conferred by any law to require or permit that officer to retire from the public service:

Provided that-

- a. nothing in this subsection shall be construed as conferring on any person or authority the power to require the Director of Public Prosecutions, the Director of Audit or the Supervisor of Elections to retire from the public service; and
  - b. any power conferred by any law to permit a person to retire from the public service shall, in the case of any public officer who may be removed from office by some person or authority other than a Commission established by this Constitution, vest in the Public Service Commission.
8. Any provision in this Constitution that vests in any person or authority the power to remove any public officer from his office shall be without prejudice to the power of any person or authority to abolish any office or to any law providing for the compulsory retirement of public officers generally or any class of public officer on attaining an age specified by or under that law.
  9. Where this Constitution vests in any person or authority the power to appoint any person to act in or to exercise the functions of any office if the holder thereof is himself unable to exercise those functions, no such appointment shall be called in question on the grounds that the holder of the office was not unable to exercise those functions.
  10. No provision of this Constitution that any person or authority shall not be subject to the direction or control of any other person or authority in the exercise of any functions under this Constitution shall be construed as precluding a court of law from exercising jurisdiction in relation to any question whether that person or authority has exercised those functions in accordance with this Constitution or any other law.
  11. Without prejudice to the provisions of section 14 of the Interpretation Act 1978(a) (as applied by subsection (16) of this section), where any power is conferred by this Constitution to make any order, regulation or rule or give any direction or make any designation, the power shall be construed as including the power, exercisable in like manner and subject to the like conditions, if

any, to amend or revoke any such order, regulation, rule, direction, or designation.

12. Subject to the provisions of subsection 3(a) of this section any reference in this Constitution to a law made before 1st November 1981 shall, unless the context otherwise requires, be construed as a reference to that law as it had effect on 31st October 1981.
13. In this Constitution references to altering this Constitution or any other law, or any provision thereof, include references-
  - a. to revoking it with or without re-enactment thereof or the making of different provision in lieu thereof;
  - b. to modifying it whether by omitting or amending any of its provisions or inserting additional provisions in it or otherwise; and
  - c. to suspending its operation for any period or terminating any such suspension.
14. In this Constitution, any reference to a time when Her Majesty is at war shall be construed as a reference to a time when Antigua and Barbuda is engaged in hostilities with another country.
15. In relation to all matters previous to 1st November 1981 references in this Constitution to Antigua or to Antigua and Barbuda shall in relation to the periods specified include (to such extent as the context may require) references as follows:-
  - a. to the associated state of Antigua as respects the period from 27th February 1967 to 31st October 1981;
  - b. to the colony of Antigua as respects the period from 1st July 1956 to 26th February 1967; and
  - c. to the presidency of Antigua comprised in the colony of the Leeward Islands as respects the period from 5th March 1872 to 30th June 1956.
16. The Interpretation Act 1978 shall apply, with the necessary adaptations, for the purpose of interpreting this Constitution and otherwise in relation thereto as it applies for the purpose of interpreting and in relation to Acts of Parliament of the United Kingdom.

## **SCHEDULE 1 TO THE CONSTITUTION**

### **PART 1**

#### **THE PROVISIONS OF THE CONSTITUTION REFERRED TO IN SECTION 47(5)**

- i. Chapter II;
- ii. Chapter VI;
- iii. Sections 22, 23, 68 and 80;
- iv. Sections 27, 28, 36, 40, 44, 46, 52, 54, 57, 58, 59, 60, 61, 62, 63, 64 and 65.
- v. Chapter VII (except sections 106, 107 and 108);
- vi. Chapter VIII;
- vii. Chapter I;
- viii. Section 123;
- ix. Section 127 in its application to any of the provisions mentioned in the foregoing items of this part.

## **PART II**

### **THE PROVISIONS OF THE SUPREME COURT ORDER REFERRED TO IN SECTION**

**47(5)**

Sections 4, 5, 6, 8, 11, 18 and 19.

### **SCHEDULE 2 TO THE CONSTITUTION**

Section 123(3) to (7)

### **PROVISIONS OF THE BARBUDA LOCAL GOVERNMENT ACT, 1976**

#### **REFERRED TO IN SECTION 123(3) TO (7)**

Sections 1 to 44 and the First Schedule

### **SCHEDULE 3 TO THE CONSTITUTION**

Section 127(1)

### **OATH (OR AFFIRMATION) OF ALLEGIANCE**

**I, \_\_\_\_\_**, do swear (or solemnly affirm) that I will faithfully bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, according to law.

So help me God. (To be omitted in affirmation).

### **OATH (OR AFFIRMATION) OF OFFICE**

**I, \_\_\_\_\_**, do swear (or solemnly affirm) that I will honour, uphold and preserve the Constitution of Antigua and Barbuda and the law, that I will conscientiously, impartially and to the best of my ability discharge my duties as and do right to all manner of people without fear or favour, affection or ill-will.

So help me God. (To be omitted in affirmation).

### **OATH (OR AFFIRMATION) OF OFFICE**

**I, \_\_\_\_\_**, do swear (or solemnly affirm) that I will not on any account, at any time whatsoever, disclose any counsel, advice, opinion or vote given by any Minister as a member of the Cabinet and that I

will not, except with the authority of the Cabinet and to such extent as may be required for the proper conduct of the government of Antigua and Barbuda, directly or indirectly reveal the business or proceedings of the Cabinet or any matter coming to my knowledge as a member of (or Secretary to) the Cabinet.

So help me God. (To be omitted in a affirmation).

## **SCHEDULE 2 TO THE ORDER**

### **TRANSITIONAL PROVISIONS**

#### **ARRANGEMENT OF PARAGRAPHS**

##### **Paragraph**

1. Discharge of Governor-General's functions.
2. Existing laws.
3. Parliament.
4. Ministers and Parliamentary Secretaries.
5. Office of Attorney-General.
6. Existing public officers.
7. Supreme Court Order.
8. Appeals Order.
9. Protection from deprivation of property.
10. Commonwealth citizen.
11. Interpretation.

#### **DISCHARGE O GOVERNOR-GENERAL'S FUNCTIONS.**

**1.-** Until such time as a person has assumed office as Governor-General having been appointed as such in accordance with section 22 of the Constitution, the person who on 31st October 1981 held office as Governor of Antigua (or, if there is no such person, the person who was then acting as Governor) shall discharge the functions of the office of Governor-General.

#### **EXISTING LAW.**

**2.-**

1. The existing laws shall, as from 1st November 1981, be construed with such modifications, adaptations, qualifications, and exceptions as may be necessary to bring them into conformity with the Constitution and the Supreme Court Order.
2. Where any matter that falls to be prescribed or otherwise provided for under the Constitution by

Parliament or by any other authority or person is prescribed or provided for by or under an existing law (including any amendment to any such law made under this paragraph), that prescription or provision shall, as from 1st November 1981, have effect (with such modifications, adaptations, qualifications and exceptions as may be necessary to bring it into conformity with the Constitution and the Supreme Court Order) as if it has been made under the Constitution by Parliament or, as the case may require, by the other authority or person.

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