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**THE VIRGIN ISLANDS (CONSTITUTION) ORDER,
1976**



Statutory Instruments

1976, No. 2145

Caribbean and North Atlantic Territories The Virgin Islands (Constitutional) order 1976

Made _____
Laid before Parliament
Coming into Operation

15th December, 1976
23rd December, 1976
1st June, 1977

[This Order is printed as amended by the Virgin Islands (Constitution) (Amendment) Order 1979 (UK--S.I. 1979 No. 1603) and the Virgin Islands (Constitution) (Amendment) Order The Court at Buckingham Palace (UK --S.I. 1982 No. 151)]

At the Court at Buckingham Palace, the 15th day of December 1976

Present,

The Queen's Most Excellent Majesty in Council;

Her Majesty, by virtue and in exercise of the powers vested in Her by Section 5 of the West Indies Act 1962 (a) and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:--

PART I

INTRODUCTORY

1. (1) This Order may be cited as the Virgin Islands (Constitution) Order 1976.

(a) 1962 c. 19.

Citation,
commencement
and revocation

(2) This Order shall come into operation on the 1st day of June, 1977.

(3) On the coming into operation of this Order the Virgin Islands (Constitution) Order 1967 to 1971 (a) shall be revoked.

(4) Notwithstanding subsections (2) and (3) of this section—

(a) the Legislative Council as constituted by the Orders hereby revoked, except that the Financial Secretary shall cease to be a member, shall remain in existence until 1st October, 1979 or until it is dissolved pursuant to sections 16 (1) and 47 (2) of this Order, whichever is the earlier, and during its existence Part IV of the Orders hereby revoked shall continue to apply in relation to the existing Council and the members thereof, except as otherwise provided in this section; and

(b) pending such dissolution, the Speaker, Deputy Speaker and members of the existing Council (other than the Financial Secretary) may continue to hold their respective offices notwithstanding that they would not be qualified to do so under this Order; but persons elected to fill their offices in the existing Council, should any of these fall vacant, shall be persons duly qualified under this Order, elected for electoral districts constituted, and by voters qualified in accordance with Part IV of the Orders hereby revoked; and

(c) on such dissolution section 48 of this Order shall apply as it does on the dissolution of the Legislative Council constituted under Part IV of this Order.

Interpretation.

2. (1) In this Order, unless it is otherwise provided or required by the context—

“the Court of Appeal” means the Court of Appeal established by the West Indies Associated States Supreme Court Order 1967 (b);

“dollars” means dollars in the currency of the Virgin Islands or the United States of America;

(a) S.I. 1967/471, 1969/1065, 1970/1942, 1971/1240 (1967 I, p.1418; 1969 II, p.3122; 1970 III, p.6341; 1971 II, p.3604).

(b) S.I. 1967/223 (1967 I, p.364).

“election” means election of an elected member of the Legislative Council and “general election” shall be construed accordingly.

“the Gazette” means the official Gazette of the Virgin Islands;

“the High Court” means the High Court established by the West Indies Associated States Supreme Court Order 1967;

“minister of religion” means any person in holy orders and any other person the functions of whose principal occupation include teaching or preaching in any congregation for religious worship;

“the Police Force” means any police force established for the Virgin Islands under any law in force in the Virgin Islands;

“public office” means, subject to the provisions of subsections (8) and (9) of this section, any office of emoluments in the public service or any office of emolument under any local government council or authority in the Virgin Islands;

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

“public service” means the service of the Crown in a civil capacity in respect of the Government of the Virgin Islands;

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

“sitting” in relation to the Legislative Council means a period during which the Council is sitting continuously without adjournment and includes any period during which the Council is in committee.

(2) For the purposes of this Order a person shall be deemed to belong to the Virgin Islands if that person—

(a) is a British subject and was born in the Virgin Islands; or

(b) is a British subject and was born outside the Virgin Islands of a father or mother who was born within the Virgin Islands

(c) has obtained the status of a British subject by reason of the grant by the Governor of a certificate of naturalisation under The British Nationality and Statute of Aliens Act, 1914 (a) or The British Nationality Act, 1948 (b); or

(d) is a person to whom a certificate has been granted under the provisions of section 15 of the Immigration and Passport Ordinance, 1969 (in this section referred to as "the Ordinance", and references to the Ordinance or to any section thereof include references to any enactment amending or replacing the same) and has not been revoked under section 16 of the Ordinance; or

(e) is a British subject above the age of eighteen years who immediately before attaining that age was the child of a person to whom a certificate had been granted under section 15 of the Ordinance and not revoked under section 16 of the Ordinance:

Provided that a person shall cease to be deemed to belong to the Virgin Islands under the provisions of this paragraph who —

(i) subsequent to attaining the age of twenty-one years is ordinarily resident outside the Virgin Islands for a period of not less than five years; or

(ii) being a female, marries a person who is not deemed to belong to the Virgin Islands under the provisions of this subsection; or

(iii) is declared to be no longer a person deemed to belong to the Virgin Islands by an order made by the Governor in accordance with provisions of the Ordinance: or

(f) is the wife of a person to whom any of the foregoing paragraphs apply and is not living apart from such person under a decree of a competent court or a deed of separation; or

(g) is the child of any person to whom *any* of the foregoing paragraphs of this subsection apply; or

(h) is a British subject and the widow of a person who immediately before his death was, or would but for his death have been, deemed to belong to the Virgin Islands under any of the foregoing paragraphs of this subsection and who was at the time of his death lawfully married to her and not living apart from her under a decree of a competent court or a deed of separation:

Provided that a woman shall cease to be deemed to belong to the Virgin Islands under the provisions of this paragraph if—

(i) subsequent to the death of her husband she is ordinarily resident outside the Virgin Islands for a period of five years or longer; or

(ii) she marries a person who is not deemed to belong to the Virgin Islands under the provisions of this subsection.

(3) In this Order, unless it is otherwise provided or required by the context —

(a) any reference to power to make appointments to any office shall be construed as including a reference to power to make appointments on promotion and transfer to that office and to power to appoint a person to perform the functions of that office during any period when it is vacant or the holder thereof is unable (whether by reason of absence or infirmity of body or mind or any other cause) to perform those functions;

(b) any reference to power to remove a public officer from office shall be construed as including a reference to any power conferred by any law to require or permit that officer to retire from the public service;

(c) any reference to the holder of an office by a term designating or describing his office shall be construed as including a reference to any person who, under and to the extent of any authority in that behalf, is for the time being performing the functions of that office.

(4) In this Order, unless it is otherwise provided or required by the context, references to the functions of the Governor shall be construed as references to his powers and duties in exercise of the executive authority of the Virgin

Islands and to any other powers or duties conferred or imposed on him as Governor by or under this Order or any other law.

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

(6) For the purposes of this Order, the resignation of the holder of any office that is required to be addressed to any person shall have effect from the time that it is received by that person.

(7) For the purposes of this Order, a person shall not be considered to hold a public office by reason only—

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

(b) that he is in receipt of any remuneration or allowances in respect of his tenure of the office of Minister or Speaker, Deputy Speaker or member of the Legislative Council.

(8) If it is provided by any law in force in the Virgin Islands that an office shall not be a public office for the purposes of Part IV of this Order, this Order shall have effect accordingly as if that provision of that law were enacted herein.

(9) References in section 19 and Part V of this Order to public offices shall not be construed as including references to—

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

(b) any office of emolument under any local government council or authority in the Virgin Islands.

(10) Where this Order vests in any person power to make appointments to any office, a person may be appointed to that office, notwithstanding that some other person may be holding that office, when that other person is on leave of absence pending relinquishment of that office; and where two or more

persons are holding the same office by reason of an appointment made in pursuance of this subsection, then, for the purposes of any function conferred upon the holder of that office, the person last appointed to the office shall be deemed to be the sole holder of the office.

(11) Where any power is conferred by this Order to make any proclamation, order or regulations or to give any directions, the power shall be construed as including a power exercisable in like manner to amend or revoke any such proclamation, order, regulations or directions.

(12) For the avoidance of doubts it is hereby declared that any person who has vacated his seat in any body, or has vacated any office, established by this Order may, if qualified, again be appointed or elected as a member of that body, or to that office, as the case may be, from time to time.

(13) Save as in this Order otherwise provided or required by the context, the Interpretation Act 1889 (a) shall apply, with the necessary adaptations, for the purpose of interpreting this Order and otherwise in relation thereto as it applies for the purpose of interpreting and in relation to an Act of Parliament.

PART II

THE GOVERNOR

3. (1) There shall be a Governor of the Virgin Islands who shall be appointed by Her Majesty by Commission under Her Sign Manual and Signet and shall hold office during Her Majesty's pleasure. Governor.

(2) The Governor shall, for the purpose of administering the Government of the Virgin Islands, have such powers and duties as are conferred or imposed on him by this Order or any other law and such other powers as Her Majesty may from time to time be pleased to assign to him, and, subject to the provisions of this Order and of any other law by which any such powers or duties are conferred or imposed, shall do and execute all things that belong to his office (including the exercise of any powers with respect to which he is empowered by this Order to act in his discretion) according to such instructions, if any, as Her Majesty may from time to time see fit to give him:

(a) 1889 c. 63.

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

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

Deputy Governor.

4. (1) There shall be a Deputy Governor who shall be such person as Her Majesty may designate in that behalf by instructions given through a Secretary of State and who shall hold office during Her Majesty's pleasure.

(2) If the office of Deputy Governor is vacant or the person holding that office is acting in the office of Governor under section 5 of this Order or is absent from the Virgin Islands or is for any other reason unable to perform the functions of the office of Deputy Governor, such person as Her Majesty may designate in that behalf by instructions given through a Secretary of State shall act in the office of Deputy Governor during Her Majesty's pleasure.

Acting Governor.

5. (1) During any period when the office of Governor is vacant or the Governor is absent from the Virgin Islands or is for any other reason unable to perform the functions of his office—

(a) the Deputy Governor; or

(b) if the office of Deputy Governor is vacant or the Deputy Governor is absent from the Virgin Islands, or is for any other reason unable to perform the functions of the office of Governor,

such person as Her Majesty may designate in that behalf by instructions given through a Secretary of State (in this section referred to as "the person designated"), shall, during Her Majesty's pleasure, act in the office of Governor and shall perform the functions of that office accordingly.

(2) Before assuming the functions of the office of Governor, the Deputy Governor or the person designated shall make the oaths or affirmations directed by section 3 (3) of this Order to be made by the Governor.

(3) The Deputy Governor shall not continue to act in the office of Governor after the Governor has notified him that he is about to assume or resume the functions of that office, and the person designated shall not continue to act in that office after the Governor or Deputy Governor has so notified him.

(4) The Governor or the Deputy Governor shall not, for the purposes of this section, be regarded as absent from the Virgin Islands or as unable to perform the functions of his office —

(a) by reason that he is in passage from one part of the Virgin Islands to another; or

(b) at any time when there is a subsisting appointment of a deputy under the next following section; or

(c) by reason of absence from the Virgin Islands for a period not exceeding forty-eight hours for the purpose of visiting the United States Virgin Islands.

(5) In this section “the Governor” means the person holding the office of Governor and “the Deputy Governor” means the person holding the office of Deputy Governor.

6. (1) Whenever the Governor —

Deputy to
Governor.

(a) has occasion to be absent from the seat of Government but not from the Virgin Islands; or

(b) has occasion to be absent from the Virgin Islands for a period which he has reason to believe will be of short duration; or

(c) is suffering from an illness which he has reason to believe will be of short duration,

he may, acting in his discretion, by instrument under the public seal, appoint the Deputy Governor, or if he is not available any other person in the Virgin Islands, 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 as may be specified in that instrument.

(2) The power and authority of the Governor shall not be abridged, altered or in any way affected by the appointment of a deputy under this section, and a deputy shall conform to and observe all instructions that the Governor 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 in any court.

(3) A person appointed as a 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 Her Majesty by instructions given through a Secretary of State or by the Governor, acting in his discretion.

Exercise of the
Governor's
functions.

7. (1) Subject to the provisions of this section, the Governor shall consult with the Executive Council in the formulation of Policy — and in the exercise of all functions conferred upon him by this Order or any other law for the time being in force in the Virgin Islands, except—

(a) when acting under instructions given to him by Her Majesty through a Secretary of State; or

(b) when exercising any function conferred upon him by this Order or any such other law which is expressed to be exercisable by him in his discretion, or in accordance with the advice of, or after consultation with, any person or authority other than the Executive Council; or

(c) in any case which, in his opinion, involves a matter for which he is responsible under section 19 of this Order:

Provided that in exercising his powers in relation to matters to which sub-paragraph (c) of this subsection applies, the Governor shall consult with the Chief Minister.

(2) Notwithstanding the provisions of subsection (1) of this section, the Governor shall not be obliged to consult with the Executive Council or the Chief Minister if, in his judgment—

(a) Her Majesty's service would sustain material prejudice; or

(b) the matter is too unimportant to require consultation; or

(c) the urgency of the matter requires him to act before he can consult the Executive Council,

but in any case falling within paragraph (c) of this subsection he shall, as soon as practicable, communicate to the Executive

Council the measures which he has adopted and the reasons therefor.

(3) In any case in which the Governor is required, under the provisions of this section, to consult the Executive Council, he shall act in accordance with the advice of the Executive Council unless in his opinion such advice would affect a matter for which he is responsible under section 19 of this Order.

(4) Where the Governor is directed by this Order to exercise any function after consultation with any person or authority other than the Executive Council, he shall not be obliged to exercise that function in accordance with the advice of that person or authority.

(5) Whenever the Governor, in pursuance of subsection (3) of this section, acts contrary to the advice given by the Executive Council, he shall, as soon as practicable, report his action and the reasons therefor to a Secretary of State.

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

8. Subject to the provisions of any law for the time being in force in the Virgin Islands, the Governor or any person duly authorised by him in that behalf by writing under his hand, in Her Majesty's name and on Her Majesty's behalf, may, under the public seal, make grants and disposition of lands or other immovable property in the Virgin Islands or interests in such property that are vested in Her Majesty for the purposes of the Government of the Virgin Islands.

Powers to
dispose of land.

9. Subject to the provisions of Part V of this Order and of any law for the time being in force in the Virgin Islands, the Governor, in Her Majesty's name and on Her Majesty's behalf, may—

Powers to
constitute offices
and make
appointments,
etc.

(a) constitute offices for the Virgin Islands and make appointments to be held during Her Majesty's pleasure, thereto, and

(b) dismiss any person so appointed or take such disciplinary action in relation to him as the Governor may think fit.

Powers of
pardon, etc.

10. (1) The Governor may, in Her Majesty's name and on Her Majesty's behalf—

(a) grant to any person concerned in or convicted of any offence against any law in force in the Virgin Islands 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 sentence passed 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) In the exercise of his powers under this section the Governor shall consult with the Committee established under section 11 of this Order, but he shall decide whether to exercise any of those powers in any case in his own deliberate judgment, whether the members of the Committee concur in his decision or otherwise.

(3) Without prejudice to the provisions of the last foregoing subsection, whenever any person has been sentenced to death (otherwise than by Court Martial) for an offence against any law in force in the Virgin Islands the Governor shall call upon the judge who presided at the trial to make him a written report of the case of such offender and shall cause such report, together with such other information derived from the record of the case or elsewhere as the Governor may require, to be taken into consideration at a meeting of the Committee so that the Committee may advise him on the exercise of his powers under this section in relation to that person:

Provided that if it is impracticable to obtain such a report, the Governor may act without such a report, but in that case shall, if practicable, cause to be taken into consideration a report furnished by the registrar of the court after consulting counsel for the prosecution and defence in the case.

Establishment
and procedure
of Mercy
Advisory
Committee.

11. (1) There shall be for the Virgin Islands an Advisory Committee on the Prerogative of Mercy (in this section and section 10 referred to as the Committee), which shall consist of the Attorney General, the Chief Medical Officer and four

members appointed by the Governor after consultation with the Chief Minister.

(2) The Committee shall not be summoned except by the authority of the Governor, acting in his discretion; and the Governor shall preside at all meetings of the Committee.

(3) No business shall be transacted at any meeting of the Committee unless there are at least three members present, of whom one shall be the Attorney General.

(4) The office as a member of the Committee of any member appointed by the Governor under subsection (1) of this section shall become vacant if the Governor, acting after consultation with the Chief Minister, revokes his appointment as a member of the Committee.

(5) Subject to subsection (3) of this section, the Committee shall not be disqualified for the transaction of business by reason of any vacancy in the membership of the Committee and the validity of the transaction of any business by the Committee shall not be affected by reason only of the fact that some person who was not entitled to do so took part in the proceedings.

(6) Subject to the provisions of this section the Committee may regulate its own proceedings.

12. The Governor shall keep and use the public seal for sealing all things whatsoever that shall pass the said seal. The public seal.

PART III

THE EXECUTIVE

13. (1) The executive authority of the Virgin Islands shall be vested in Her Majesty. Executive authority of the Virgin Islands.

(2) Subject to the provisions of this Order, the executive authority of the Virgin Islands may be exercised on behalf of Her Majesty by the Governor, either directly or through officers subordinate to him, but nothing in this subsection shall operate so as to prejudice the provisions of any law for the time being in force in the Virgin Islands whereby functions are, or may be, conferred on persons or authorities other than the Governor.

Executive
Council.
SI 1979 No. 1603.

14. There shall be an Executive Council in and for the Virgin Island which shall consist of the Chief Minister, not less than two nor more than three other Ministers and the Attorney General.

Appointment of
Ministers.

15. (1) The Chief Minister shall be appointed by the Governor as follows:

(a) If a political party gains a majority of the seats of elected members of the Legislative Council the Governor shall appoint as Chief Minister the elected member of the Legislative Council recommended by a majority of the elected members of the Legislative Council who are members of that party.

(b) If no political party gains such a majority or if no recommendation is made under paragraph (a) of this subsection, the Governor acting in his discretion, shall appoint as Chief Minister the elected member of the Legislative Council who, in his judgment, is best able to command the support of a majority of the elected members of the Legislative Council.

SI 1979 No. 1603.

(2) The other three Ministers shall be appointed by the Governor in accordance with the advice of the Chief Minister from among the elected members of the Legislative Council.

(3) The Governor, acting in accordance with the advice of the Chief Minister, shall appoint one of the Ministers as Deputy Chief Minister. This appointment may be revoked by the Governor, acting in accordance with the advice of the Chief Minister, but such revocation shall not in itself affect the Minister's tenure of office as a Minister.

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

(5) Appointments made under this section shall be made by instrument under the public seal.

Tenure of office
of Ministers.

16. (1) If a motion that the Legislative Council should declare a lack of confidence in the Government of the Virgin Islands receives in the Legislative Council the affirmative votes of a majority of all the elected members thereof, the Governor

shall by instrument under the public seal, revoke the appointment of the Chief Minister:

Provided that before so revoking the Chief Minister's appointment the Governor shall consult with the Chief Minister and, if the Chief Minister so requests, the Governor, acting in his discretion, may dissolve the Legislative Council instead of revoking the appointment.

(2) The Chief Minister shall vacate his office if, after the polling in a general election and before the Legislative Council first meets thereafter, the Governor, acting in his discretion, informs him that he is about to appoint another person as the Chief Minister.

(3) Any Minister shall vacate his office if —

(a) he ceases to be a member of the Legislative Council for any reason other than a dissolution; or

(b) he is not an elected member of the Legislative Council when it first meets after a general election;

(c) he is required under the provisions of section 30 (3) of this Order to cease to perform his functions as a member of the Legislative Council; or

(d) he resigns it by writing under his hand addressed to the Governor; or

(e) if he is absent from the Virgin Islands without, in the case of the Chief Minister, having given the Governor prior notice of such absence or, in the case of any other Minister, having obtained the written permission of the Governor, acting in accordance with the advice of the Chief Minister.

(4) A Minister other than the Chief Minister shall also vacate his office if —

(a) the Chief Minister vacates his office; or

(b) his appointment is revoked by the Governor, acting in accordance with the advice of the Chief Minister, by instrument under the public seal.

17. (1) If the Chief Minister is expected to be absent from the Virgin Islands for more than forty-eight hours, the Governor shall, by notice in the Gazette, authorise the Deputy Chief Minister to perform the functions conferred on the Chief Minister under this Order. This authority shall be revoked by

Performance of
functions of
Chief Minister in
certain events.

the Governor, by notice in the Gazette, on the return of the Chief Minister to the Virgin Islands.

(2) If the Executive Council advises the Governor that the Chief Minister is unable to perform his functions by reason of illness, the Governor shall, by notice in the Gazette authorise the Deputy Chief Minister to perform the functions conferred on the Chief Minister under this Order. This authority shall be revoked by the Governor if the Executive Council advises him that the Chief Minister is again able to perform his functions.

Assignment of responsibilities to Ministers.

18. (1) The Governor, acting in accordance with the advice of the Chief minister, may, by directions in writing, assign to any Minister responsibility for the conduct (subject to the provisions of this Order and of any other law) of any business of the Government of the Virgin Islands, including responsibility for the administration of any department of government:

Provided that a Minister shall not be charged with responsibility under this section for any of the matters mentioned in the next following section.

(2) The Governor, acting in his discretion, may at any time call for any official papers or seek any official information or advice available to a Minister with respect to a matter for which that Minister is responsible under this section.

Governor's special responsibilities.

19. The Governor shall be responsible for the conduct (subject to the provisions of this Order and of any other law) of any business of the Government of the Virgin Islands, including the administration of any department of government, with respect to the following matters:—

- (a) external affairs;
- (b) defence, including armed forces;
- (c) internal security, including the Police Force;
- (d) the terms and conditions of service of persons holding or acting in public offices;
- (e) the administration of the courts:

Provided that the Governor, after consultation with the Chief Minister, may assign to any member of the Executive Council responsibility for the conduct on behalf of the Governor of any business in the Legislative Council with respect to any of the said matters.

20. Every member of the Executive Council shall, before entering upon the duties of his office as a member, make before the Governor an oath or affirmation of allegiance in the form set out in the Schedule to this Order and an oath or affirmation for the due execution of that office in such form as may be prescribed by any law in force in the Virgin Islands or, if no law in that behalf is for the time being in force, in the form set out in the Schedule to this Order.

Oaths.

21. The Governor may summon any public officer to a meeting of the Executive Council whenever, in his opinion, the business before the Council renders the presence of that officer desirable.

Summoning of persons to the Council.

22. The Executive Council shall not be summoned except by the authority of the Governor, acting in his discretion:

Summoning of the Council.

Provided that the Governor shall summon the Council if the Chief Minister so requests.

23. (1) The Governor shall, so far as is practicable, attend and preside at meetings of the Executive Council.

Proceedings in the Council.

(2) In the absence of the Governor there shall preside at any meeting of the Executive Council such member of the Council as the Governor, acting in his discretion, may appoint.

(3) No business shall be transacted at any meeting of the Council if there are less than two members present besides the Governor or other person presiding.

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

24. (1) The Attorney General shall have power, in any case in which he considers it desirable so to do—

Powers of Attorney General.

(a) to institute and undertake criminal proceedings against any person before any civil court in respect of any offence against any law in force in the Virgin Islands;

(b) to take over and continue any such criminal proceedings that have been instituted by any other person or authority; and

(c) to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by himself or any other person or authority.

(2) The powers of the Attorney General under the last foregoing subsection may be exercised by him in person or by officers subordinate to him acting under and in accordance with his general or special instructions.

(3) The powers conferred upon the Attorney General by paragraphs (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 at any stage before the person against whom the proceedings have been instituted has been charged before the court.

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

(5) In the exercise of the powers conferred upon him by this section, section 49 (2) and section 50 of this Order the Attorney General shall not be subject to the direction or control of any other person or authority.

PART IV

THE LEGISLATURE

Composition

Composition of
Legislature.

25. There shall be a Legislature of the Virgin Islands which shall consist of Her Majesty and a Legislative Council.

Legislative
Council.

26. The Legislative Council shall consist of a Speaker elected as provided in section 32 of this Order, one ex officio

member, namely the Attorney General, and nine elected members.

27. (1) The elected members of the Legislative Council shall be persons qualified for election in accordance with the provisions of this Order and, subject to the provisions of this Order, shall be elected in the manner provided by or under any law for the time being in force in the Virgin Islands.

Elected Members.

(2) For the purposes of elections the Virgin Islands shall be divided into nine electoral districts in such manner as may be provided by or under any such law, and each such district shall return one member to the Council.

28. Subject to the next following section, a person shall be qualified to be elected as a member of the Legislative Council, if, and shall not be qualified to be so elected unless, he—

Qualifications
for elected
membership.

(a) is a British subject of the age of twenty-one years or upwards, and

(b) is deemed to belong to the Virgin Islands, and

(c) is otherwise qualified as a voter under section 31 of this Order.

29. (1) No person shall be qualified to be elected as a member of the Legislative Council who —

Disqualifications
for elected
membership.

(a) is, by virtue of his own act, under any acknowledgement of allegiance, obedience or adherence to a foreign power or state; or

(b) holds, or is acting in, any public office; or

(c) is a minister of religion; or

(d) has been adjudged or otherwise declared bankrupt under any law in force in any part of the Commonwealth and has not been discharged; or

(e) is a person certified to be insane or otherwise adjudged to be of unsound mind under any law in force in the Virgin Islands; or

(f) is under sentence of death imposed on him by a court, or is serving a sentence of imprisonment (by whatever name called) for a term exceeding twelve months imposed on him by a court or substituted by competent authority for some other sentence imposed on

him by a court, or is under such a sentence of imprisonment the execution of which has been suspended; or

(g) is disqualified for membership of the Council by or under any law in force in the Virgin Islands by reason of his having been convicted or reported guilty of any offence relating to elections; or

(h) is a party to, or a partner in a firm or a director or manager of a company which is a party to, any contract with the Government of the Virgin Islands for or on account of the public service, and has not, within fourteen days before his nomination as a candidate for election, published in the Gazette or in a newspaper circulating in the Virgin Islands a notice setting out the nature of such contract and his interest, or the interest of such firm or company, therein.

(2) For the purposes of paragraph (f) of the foregoing subsection —

(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 seats
of members of
Legislative
Council.

30. (1) Every elected member of the Legislative Council shall vacate his seat therein at the next dissolution of the Council after his election.

(2) An elected member of the Legislative Council shall also vacate his seat therein—

(a) if he resigns it by writing under his hand addressed to the Speaker; or

(b) if he is absent from the sittings of the Council for such period and in such circumstances as may be prescribed in the Standing Orders of the Council; or

(c) if he ceases to be qualified for election; or

(d) subject to the next following subsection, if any circumstances arise that, if he were not a member of the

Council, would cause him to be disqualified for election as such by virtue of any provision of subsection (1) of the last foregoing section other than paragraph (h); or

(e) if he becomes a party to any contract with the Government of the Virgin Islands for or on account of the public service or if any firm in which he is a partner, or any company of which he is a director or manager, becomes a party to any such contract, or if he becomes a partner in a firm, or a director or manager of a company which is a party to any such contract:

Provided that, if in the circumstances it shall appear just to the Council so to do, the Council may exempt any elected member from vacating his seat under the provisions of this paragraph if such member shall, before becoming a party to such contract as aforesaid, or before, or as soon as practicable after, becoming otherwise interested in such contract (whether as a partner in a firm or director or manager of a company), disclose to the Council the nature of such contract and his interest or the interest of any such firm or company therein.

(3) (a) If circumstances such as are referred to in paragraph (d) of the last foregoing subsection arise because a member is declared bankrupt, adjudged to be of unsound mind, under sentence of death or imprisonment or convicted or reported guilty of an offence relating to elections 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 but, subject to the next following paragraph, he shall not vacate his seat in the Council 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 Legislative Council.

(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 of 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 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.

(4) In any case in which the Council, under paragraph (e) of subsection (2) of this section, decides not to exempt an elected member from vacating his seat, the member may appeal to the High Court against the decision, and subsection (3) of this section shall apply in the same manner as it does in the circumstances therein specified.

Qualifications of
voters.

31. (1) Subject to the provisions of subsection (2) of this section, a person shall be qualified to be registered as a voter for the purposes of elections if, and shall not be so qualified unless, he is a British subject and is deemed to belong to the Virgin Islands and on the qualifying date has attained the age of eighteen years and he either—

(a) is domiciled and resident in the Virgin Islands on the qualifying date; or

(b) on that date is domiciled in the Virgin Islands and resident in the United States Virgin Islands:

Provided that any person who is registered as a voter on the date on which this Order comes into operation and is a British subject and on the qualifying date is domiciled and resident in the Virgin Islands or on that date is domiciled in the Virgin Islands and resident in the United States Virgin Islands may be registered as a voter notwithstanding that he is not deemed to belong to the Virgin Islands.

(2) No person shall be qualified to be registered as a voter under this section who on the qualifying date—

(a) is a person certified to be insane or otherwise adjudged to be of unsound mind under any law in force in the Virgin Islands; or

(b) is disqualified by or under any such law from being registered as a voter for the purposes of elections by reason of his having been convicted of an offence relating to elections; or

(c) is under sentence of death imposed on him by a court or is serving a sentence of imprisonment (by whatever name called) for a term exceeding twelve months imposed on him by a court or substituted by competent authority for some other sentence imposed on him by a court.

(3) In this section "the qualifying date" means such date as may be appointed by or under any law in force in the Virgin Islands as the date with reference to which the qualifications of any person for registration are to be ascertained.

(4) For the purposes of subsection (2) (c) 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 those 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.

32. (1) When the Legislative Council 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 of the Council, and, if the office of Speaker falls vacant for any reason other than a dissolution of the Council, the Council shall, as soon as practicable elect another person to that office.

Speaker and
Deputy Speaker.

(2) The Speaker shall be elected from among persons who are not members of the Executive Council or the Legislative Council, and no person shall be elected as Speaker if—

(a) he is not a person qualified for election as a member of the Legislative Council; or

(b) he is a person disqualified for election as a member of that Council by virtue of any provisions of section 29 (1) of this Order other than paragraph (h).

(3) When the Legislative Council first meets after any general election and before it proceeds to the despatch of any other business except the election of the Speaker, it shall elect a member of the Legislative Council who is not a member of the Executive Council to be Deputy Speaker of the Legislative

Council; and if the office of Deputy Speaker falls vacant for any reason other than a dissolution of the Council, the Council shall, as soon as convenient, elect another such member to that office.

(4) A person shall vacate the office of Speaker or Deputy Speaker—

(a) on dissolution of the Legislative Council; or

(b) if he announces the resignation of his office to the Legislative Council or if by writing under his hand addressed to the Council and received by the Clerk of the Council he resigns that office; or

(c) if a motion for his removal from office is carried by the votes of six or more elected members of the Council;

(d) in the case of the Speaker—

(i) if he ceases to be a person qualified for election as a member of the Legislative Council; or

(ii) if any circumstances arise that would cause him to be disqualified for election as an elected member of that Council by virtue of any provision of section 29 (1) of this Order other than paragraph (h); or

(iii) on the expiration of a period of thirty days from the date of his election if he was at that date a party to, or a partner in a firm or a director or manager of a company which is a party to, any contract with the Government of the Virgin Islands for or on account of the public service and if, before the expiration of that period, he has not disclosed to the Council the nature of such contract and his interest, or the interest of such firm or company, therein and the Council has not exempted him from vacating his office under this sub-paragraph; or

(iv) if any circumstances arise that, if he were an elected member of the Council, would cause him to vacate his seat under paragraph (e) of section 30 (2) of this Order;

(e) in the case of the Deputy Speaker if he ceases to be a member of the Council for any reason other than a dissolution of the Council or if, by virtue of section 30 (3)

of this Order, he is required to cease to perform his functions as a member or if he is appointed to be a member of the Executive Council.

33. (1) Subject to the provisions of this section, the Governor may appoint a Leader of the Opposition.

Leader of the
Opposition.

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

(a) a member of the Legislative Council recommended by a majority of the elected members of the Legislative Council who are members of any opposition party whose numerical strength in that Council is greater than that of any other opposition party; or

(b) if there is no such party or if no recommendation is made under paragraph (a) of this subsection, the member of the Legislative Council who in the judgment of the Governor is best able to command the support of the members of the Legislative Council in opposition to the Government.

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

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

(a) if for any reason other than a dissolution of the Legislative Council the holder thereof ceases to be a member of that Council; or

(b) If the holder thereof is appointed as the Chief Minister.

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

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

Powers and Procedure

Power to make laws.

34. Subject to the provisions of this Order, the Legislature shall have power to make laws for the peace, order and good government of the Virgin Islands.

Standing Orders.

35. Subject to the provisions of this Order, the Legislative Council may make, amend and revoke Standing Orders for the regulation and orderly conduct of its own proceedings and the despatch of business, and the passing, intituling and numbering of Bills and the presentation of the same to the Governor for assent.

Oath of allegiance.

36. No member of the Legislative Council shall be permitted to take part in the proceedings of the Council (other than proceedings necessary for the purposes of this section) until he has made and subscribed before the Council an oath of affirmation in the form set out in the Schedule to this Order:

Provided that the election of a Speaker and Deputy Speaker of the Legislative Council may take place before the members thereof have made such oath or affirmation.

Presiding in the Council.

37. (1) The Speaker or, in his absence, the Deputy Speaker or, if they are both absent, a member of the Legislative Council (not being a member of the Executive Council) elected by the Legislative Council for that sitting shall preside at each sitting of the Legislative Council.

(2) References in this section to circumstances in which the Speaker or Deputy Speaker is absent include references to circumstances in which the office of Speaker or Deputy Speaker is vacant.

Voting.

38. (1) Subject to the provisions of this section and of section 32 (4) (c), all questions proposed for decision in the Legislative Council shall be determined by a majority of the votes of the members present and voting.

(2) Notwithstanding the provisions of subsection (1) of this section, only the elected members of the Council shall be entitled to vote in an election of the Speaker or Deputy Speaker or on a motion for the removal from office of the Speaker or Deputy Speaker or on a motion that the Legislative Council should declare a lack of confidence in the Government of the Virgin Islands.

(3) The person presiding shall not vote unless on any question the votes are equally divided in which case he shall have and exercise a casting vote:

Provided that where the motion before the Council is one to which subsection (2) of this section applies the person presiding shall not have a casting vote unless he is an elected member.

(4) In the event of an equality of votes on any question the motion shall be lost.

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

Validity of proceedings.

40. (1) A quorum of the Legislative Council shall consist of five members besides the person presiding at the sitting.

Quorum.

(2) If at any sitting of the Legislative Council any member 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 Standing Orders of the Council, the person presiding at the sitting ascertains that a quorum of the Council is still not present, the Council shall be adjourned.

41. (1) Subject to the provisions of this Order and of the Standing Orders of the Legislative Council, any member may introduce any Bill or propose any motion for debate in, or may present any petition to, the Council, and the same shall be debated and disposed of according to the Standing Orders of the Council.

Introduction of Bills, etc.

(2) Except on the recommendation of the Minister responsible for finance, the Legislative Council shall not —

(a) proceed upon any Bill (including any amendment to a Bill) which, in the opinion of the person presiding in the Council, makes provision for imposing or increasing any tax, for imposing or increasing any charge on the revenues or other funds of the Virgin Islands or for altering any such charge otherwise than by

reducing it or for compounding or remitting any debt due to the Virgin Islands; or

(b) proceed upon any motion (including any amendment to a motion) the effect of which, in the opinion of the person presiding in the Council, is that provision would be made for any of the purposes aforesaid.

Assent to Bills.

42. (1) A Bill passed by the Legislative Council shall become a law when—

(a) the Governor has assented thereto in Her Majesty's name and on Her Majesty's behalf and has signed the same in token of such assent, or

(b) Her Majesty has given Her assent thereto through a Secretary of State and the Governor has signified such assent by proclamation published in the Gazette.

(2) When a Bill is presented to the Governor for assent he shall declare that he assents or refuses to assent thereto or that he reserves the Bill for the signification of Her Majesty's pleasure:

Provided that, unless he has been authorised by a Secretary of State to assent thereto, the Governor shall reserve for the signification of Her Majesty's pleasure any Bill which appears to him, acting in his discretion —

(a) to be inconsistent with any obligation of Her Majesty or of Her Majesty's Government in the United Kingdom towards any other state or powers or any international organisation; or

(b) to be likely to prejudice the Royal prerogative; or

(c) to be in any way repugnant to or inconsistent with the provisions of this Order.

Disallowance of Laws.

43. (1) Any law assented to by the Governor may be disallowed by Her Majesty through a Secretary of State.

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

(3) On the annulment of any law under this section, any enactment repealed or amended by or in pursuance of that law

shall have effect as from the date of the annulment as if that law had not been made; but save as provided by the foregoing provisions of this subsection, section 38 (2) of the Interpretation Act 1889 (a) shall apply to that annulment as it applies to the repeal of an Act of Parliament.

44. (1) Subject to the provisions of subsection (2) of this section, if the Governor considers that it is necessary or expedient for the purposes of any of the matters for which he is responsible under section 19 of this Order that any Bill introduced, or any motion proposed, in the Legislative Council should have effect, then, if the Legislative Council fails to pass such Bill or motion within such time and in such form as the Governor may think reasonable and expedient, the Governor may, at any time that he thinks fit, and notwithstanding any provisions of this Order or of any Standing Orders of the Legislative Council, declare that such Bill or motion shall have effect as if it has been passed or carried by the Legislative Council, either in the form in which it was so introduced or proposed or with such amendments as the Governor shall think fit which have been proposed in the Legislative Council or in any committee thereof; and thereupon the said Bill or motion shall have effect as if it had been so passed or carried, and, in the case of any such Bill, the provisions of this Order relating to assent to Bills and disallowance of laws shall have effect accordingly.

Governor's
reserved power.

(2) The Governor shall not make any declaration under this section except in accordance with the following conditions, that is to say—

(a) the question whether the declaration should be made shall first be submitted in writing by the Governor to the Executive Council and if, upon the question being so submitted to it, the Executive Council advises him that the declaration should be made, the Governor may make the declaration;

(b) if, when the question whether the declaration should be made is submitted to it as aforesaid, the Executive Council does not, within such time as the Governor thinks reasonable and expedient, advise him that the declaration should be made, then —

- (i) the Governor may submit the said question to the Secretary of State and may make the declaration if, upon the question being so submitted to him, a Secretary of State authorises the Governor to make the declaration; or
- (ii) the Governor may make the declaration without submitting the said question to a Secretary of State if, in the Governor's opinion, urgent necessity requires that the declaration be made without obtaining the authority of a Secretary of State; in which case he shall, at the time of making the declaration, certify in writing that urgent necessity requires that the declaration be made without obtaining such authority.

(3) (a) Whenever the Governor, in accordance with the provisions of subsection (2) (b) of this section, submits to a Secretary of State the question whether a declaration should be made, or makes a declaration without submitting the said question to a Secretary of State, he shall inform the Executive Council in writing of his reasons for so doing.

(b) Whenever the Governor makes a declaration under this section, other than a declaration made with the authority of a Secretary of State, he shall forthwith report to a Secretary of State the making of, and the reasons for, the declaration and, in the case of a declaration made in accordance with the provisions of sub-paragraph (ii) of subsection (2) (b) of this section, the grounds of urgency.

(4) If any member of the Legislative Council objects to any declaration made under this section, he may, within seven days of the making thereof, submit to the Governor a statement in writing of his reasons for so objecting; and a copy of such statement shall, if furnished by such member, be forwarded by the Governor as soon as practicable to a Secretary of State.

(5) Any declaration made under this section that relates to a motion may be revoked by a Secretary of State, and the Governor shall cause notice of such revocation to be published in the Gazette; and from the date of such publication any motion which has effect by virtue of the declaration shall cease to have effect, and section 38 (2) of the Interpretation Act 1889 shall apply to the revocation as it applies to the repeal of an Act of Parliament.

(6) The powers conferred on the Governor by subsections (1) and (2) of this section shall be exercised by him in his discretion.

45. The Legislature may by law determine and regulate the privileges, immunities and powers of the Legislative Council and the members thereof, but no such privileges, immunities or powers shall exceed those of the Commons' House of Parliament of the United Kingdom or of the members thereof.

Privileges etc. of Council.

Miscellaneous

46. (1) Subject to the provisions of this section, the sessions of the Legislative Council shall be held at such times and places as the Governor may appoint by proclamation published in the Gazette.

Sessions of Council.

(2) The first session of the Council shall commence within a period of three months after the first general election held after the commencement of this Order and thereafter there shall be a session of the Council from time to time so that a period of three months does not intervene between the last sitting in one session and the first sitting in the next session.

47. (1) The Governor, acting in accordance with the advice of the Chief Minister, may at any time, by proclamation published in the Gazette, prorogue the Legislative Council.

Prorogation and dissolution.

(2) The Governor, acting after consultation with the Chief Minister, may at any time, by proclamation published in the Gazette, dissolve the Legislative Council.

(3) The Governor shall dissolve the Legislative Council at the expiration of four years from the date when the Council first meets after any general election unless it has been sooner dissolved.

48. A general election shall be held at such time within two months after every dissolution of the Council as the Governor shall appoint by proclamation published in the Gazette.

General elections.

49. (1) The High Court shall have jurisdiction to hear and determine an appeal under section 30 (4) of this Order and any question whether—

Determination of questions as to membership.

(a) any person has been validly elected as a member of the Legislative Council; or

(b) any elected member of the Council has vacated his seat therein or is required by virtue of section 30 (3) of this Order to cease to perform his functions as a member.

(2) An application to the High Court for the determination of—

(a) any question under paragraph (a) of the last foregoing subsection may be made by any person entitled to vote in the electoral district and at the election to which the application relates or by any person who was a candidate in that district at that election or by the Attorney General;

(b) any question under paragraph (b) of that subsection may be made by any person entitled to vote at an election in the electoral district for which the member concerned was returned or by any elected member of the Legislative Council or by the Attorney General,

and if such an application is made by a person other than the Attorney General, the Attorney General may intervene and may then appear or be represented in the proceedings.

(3) The Legislature may make provision with respect to—

(a) 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

(b) the powers, practice and procedure of the High Court in relation to any such application.

(4) 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.

(5) No appeal shall lie from any decision of the Court of Appeal in exercise of the jurisdiction conferred by the last foregoing subsection 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.

50. (1) Any person who sits or votes in the Legislative Council knowing or having reasonable grounds for knowing that he is not entitled so to do shall be liable to a penalty not exceeding five hundred dollars for every day upon which he so sits or votes.

Penalty for unauthorised person sitting or voting.

(2) The said penalty shall be recoverable by action in the High Court at the suit of the Attorney General.

PART V

THE PUBLIC SERVICE

Public Service — General

51. (1) There shall be in and for the Virgin Islands a Public Service Commission which shall consist of three members, of whom two shall be appointed by the Governor acting in his discretion and one shall be appointed by the Governor after consultation with the Civil Service Association.

Public Service Commission.

(2) The Governor, acting after consultation with the Chief Minister, shall appoint one of the three members of the Public Service Commission to be Chairman of the Commission.

(3) No person shall be qualified to be appointed as a member of the Public Service Commission if he is a member of, or a candidate for election to, the Legislative Council, or holds or is acting in any public office.

(4) The office of a member of the Public Service Commission shall become vacant—

(a) at the expiration of three years from the date of his appointment or such earlier time as may be specified in the instrument by which he was appointed; or

(b) if he resigns his office by writing under his hand addressed to the Governor; or

(c) if he becomes a member of, or a candidate for election to, the Legislative Council or is appointed to or to act in any public office; or

(d) if the Governor, acting in his discretion, directs that he shall be removed from office for inability to discharge the functions thereof (whether arising from

infirmity of body or mind or any other cause) or for misbehaviour.

(5) If the office of a member of the Public Service Commission is vacant or a member is for any reason unable to perform the functions of his office, the Governor, acting in the manner prescribed by subsection (1) of this section for the appointment of that member, may appoint a person who is qualified for appointment as a member of the Commission to act as a member of the Commission, and any person so appointed shall, subject to the provisions of the preceding subsection, continue so to act until he is notified by the Governor, acting in his discretion, that the circumstances giving rise to the appointment have ceased to exist:

Provided that, in the case of a vacancy in the office of the Chairman or the inability of the holder thereof to perform his functions, the functions of the office of Chairman shall be performed by such member of the Commission or person acting as a member as the Governor, acting after consultation with the Chief Minister, may designate.

Power to appoint,
etc., to public
office.

52. (1) Power to make appointments to public offices and to remove and to exercise disciplinary control over persons holding or acting in such offices shall vest in the Governor, acting after consultation with the Public Service Commission:

Provided that before appointing any person to the office of a permanent secretary or head of department the Governor shall in addition consult with the Chief Minister.

(2) The Governor, acting after consultation with the Public Service Commission, may, by regulations published in the Gazette, delegate to any member of the Commission or any public officer or class of public officer, to such extent and subject to such conditions as may be prescribed in the regulations, any of the powers vested in him by the last foregoing subsection.

(3) The provisions of subsection (1) of this section shall not apply to—

(a) any office to which section 55 of this Order applies; or

(b) any office in the Police Force below the rank of Assistant Superintendent to the extent that the Chief of Police or some other officer of the Police Force is empowered by any law for the time being in force in the

Virgin Islands to exercise the powers mentioned in that subsection.

53. The Governor, acting after consultation with the Public Service Commission, may by regulation make provision for —

Regulations
regarding Public
Service
Commission.

(a) the organisation of the work of the Commission and the manner in which it performs its functions;

(b) consultation by the Commission with persons or authorities other than members of the Commission.

Judicial and Legal Service

54. There shall be for the Virgin Islands a Judicial and Legal Service Commission which shall consist of:—

Judicial and
Legal Service
Commission.

(a) the Chief Justice, who shall be Chairman;

(b) another judge of the Court of Appeal or the High Court nominated by the Chief Justice after consultation with the Governor; and

(c) the Chairman of the Public Service Commission.

54A. (1) There shall be in and for the Virgin Islands a Teaching Service Commission which shall consist of three members appointed by the Governor.

Teaching Service
Commission.
SI 1982 No. 151.

(2) In appointing one member of the Teaching Service Commission the Governor shall act in his discretion and in appointing one member thereof he shall act after consultation with the British Virgin Islands Teachers Union.

(3) The provisions of sections 51 (2), (3), (4), and (5) and 53 of this Order shall apply in relation to the Teaching Service Commission as they apply in relation to the Public Service Commission and for that purpose shall have effect as if the references therein to the latter were references to the former.

(4) The provisions of section 52 (1) and (2) of this Order shall, in their application to any office of teacher in the Government Teaching Service, have effect in relation to any such office as if the references therein to the Public Service Commission were references to the Teaching Service Commission.

Power to
appoint, etc., to
legal offices.

55. (1) Power to make appointments to the offices to which this section applies and to remove and to exercise disciplinary control over persons holding or acting in such offices shall vest in the Governor, acting after consultation with the Judicial and Legal Service Commission.

(2) This section applies to the offices of the Attorney General and Magistrate, any office in the public service of any Registrar or other officer of the High Court who is required to possess legal qualifications, and to such other offices in the public service, for appointment to which persons are required to possess legal qualifications, as may be prescribed by any law for the time being in force in the Virgin Islands.

Pensions

Applicability of
pensions law.

56. (1) Subject to the provisions of section 58 of this Order, the law applicable to the grant and payment to any officer, or to his widow, children, dependants or personal representatives, of any pension, gratuity or other like allowance (in this section and the two next following sections referred to as an "award") in respect of the service of that officer in a public office shall be that in force on the relevant day or any later law not less favourable to the person concerned.

(2) For the purposes of this section the relevant day is —

(a) in relation to an award granted before the appointed day, the day on which the award was granted;

(b) in relation to an award granted or to be granted on or after the appointed day to or in respect of a person who was a public officer before that day, the day immediately before that day;

(c) in relation to an award granted or to be granted to or in respect of a person who first becomes a public officer on or after the appointed day, the day on which he becomes a public officer.

(3) For the purposes of this section, in so far as the law applicable to an award depends on the option of the person to or in respect of whom it is granted or to be granted, the law for which he opts shall be taken to be more favourable to him than any other law for which he might have opted.

(4) In this section "the appointed day" means 18th April 1967.

57. Awards granted under any law for the time being in force in the Virgin Islands shall be charged on and paid out of the Consolidated Fund of the Virgin Islands.

Pensions etc., charged on Consolidated Fund of the Virgin Islands.

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

Grant and withholding of pensions etc.

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

PART VI

FINANCE

59. All revenues or other moneys raised or received by or for the purposes of the Government (not being revenues or other moneys that are payable by or under any law into some other fund established for any specific purpose or that may, by or under any law, be retained by the authority that received them for the purpose of defraying the expenses of that authority) shall be paid into and form a Consolidated Fund.

Consolidated Fund.

60. (1) No money shall be withdrawn from the Consolidated Fund except upon the authority of a warrant under the hand of the Minister charged with responsibility for finance (in this Part referred to as "the Minister"):

Withdrawal of money from the Consolidated Fund or other public funds.

Provided that where, in the opinion of the Governor, acting in his discretion, moneys are required to enable him to discharge his responsibilities under section 19 of this Order, such moneys may be withdrawn from the Consolidated Fund either—

(a) upon the authority of a warrant under the hand of the Minister; or

(b) upon the authority of a warrant under the hand of the Governor acting in his discretion.

(2). No warrant shall be issued by the Minister for the purpose of meeting any expenditure unless—

(a) the expenditure has been authorised for the financial year during which the withdrawal is to take place —

(i) by an Appropriation Ordinance;
or

(ii) by a supplementary estimate approved by resolution of the Legislative Council; or

(b) the expenditure has been authorised in accordance with the provisions of section 62 of this Order; or

(c) it is expenditure (in this Part referred to as “statutory expenditure”) that is charged upon the Consolidated Fund by this Order or by any other law.

(3) No moneys shall be withdrawn from any public fund other than the Consolidated Fund unless the issue of those moneys has been authorised by or under any law.

Authorisation of
expenditure.

61. (1) The Minister shall cause to be prepared and laid before the Legislative Council as soon as practicable before the commencement of each financial year estimates of the revenues and expenditure of the Virgin Islands for that year:

Provided that, if the Legislative Council is dissolved less than three months before the commencement of any financial year, the estimates for that year may be laid before the Council as soon as practicable after the commencement of that year.

(2) The heads of expenditure contained in the estimates (other than statutory expenditure) shall be included in a Bill to be known as an Appropriation Bill which shall be introduced into the Legislative Council to provide for the issue from the Consolidated Fund of the sums necessary to meet that expenditure and for the appropriation of those sums to the purposes specified therein.

(3) If in respect of any financial year it is found—

(a) that the amount appropriated by the Appropriation Ordinance to any purpose is insufficient or that a need has arisen for expenditure for a purpose to which no amount has been appropriated by that Ordinance; or

(b) that any moneys have been expended for any purpose in excess of the amount appropriated to that purpose by the Appropriation Ordinance or for a purpose to which no amount has been appropriated by that Ordinance;

a supplementary estimate, showing the sum required or spent, shall be laid before the Legislative Council.

(4) Where in respect of any financial year any supplementary estimates have been laid before the Legislative Council in accordance with the provisions of subsection (3) of this section and approved by resolution of that Council, a Supplementary Appropriation Bill shall, as soon as practicable after the end of that year, be introduced into that Council to provide for the appropriation to the purposes in question of the sums included in such estimates that have been expended for that year.

(5) Where in respect of any financial year moneys have been withdrawn from the Consolidated Fund upon the authority of a warrant issued by the Governor by virtue of the proviso to section 60 (1) of this Order, the Minister shall, if the circumstances of the case so require, cause a statement of expenditure in respect of such moneys to be prepared and laid before the Legislative Council.

62. If the Appropriation Ordinance in respect of any financial year has not come into operation by the beginning of that financial year, the Legislative Council by resolution may empower the Minister to authorise the withdrawal of moneys 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 Appropriation Ordinance, whichever is the earlier.

Authorisation of expenditure in advance of appropriation.

63. (1) The Legislature may by law make provision for the establishment of a Contingencies Fund and for authorising the Minister to make advances from that fund if he is satisfied that there is urgent and unforeseen need for expenditure for which no other provision exists.

Contingencies Fund.

(2) When any advance is made from the Contingencies Fund a supplementary estimate shall, as soon as practicable, be laid before the Legislative Council for the purpose of authorising the replacement of the amount so advanced.

Public Debt.

64. (1) All debt charges for which the Virgin Islands are 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 revenues of the Virgin islands or the Consolidated Fund and the service and redemption of debt thereby created.

Remuneration of certain officers.

65. (1) There shall be paid to the holders of the offices to which this section applies such salary or other remuneration and such allowances as may be prescribed by or under a law enacted by the Legislature.

(2) The remuneration and allowances payable to the holders of those offices shall be charged on the Consolidated Fund.

(3) The remuneration prescribed in pursuance of this section in respect of the holder of any such office 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 without his consent be altered to his disadvantage after his appointment.

(4) Where a person's remuneration or other terms of service depend upon his option, the remuneration 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 others for which he might have opted.

(5) This section applies to the offices of Governor, Deputy Governor, Chairman or other member of the Public Service Commission, Attorney General and Auditor.

The Auditor.

66. (1) There shall be an Auditor whose office shall be a public office.

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

(3) The Auditor shall submit his reports made under subsection (2) of this section to the Minister who shall cause them to be laid before the Legislative Council.

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

PART VII

TRANSITIONAL AND MISCELLANEOUS

67. (1) The existing laws shall, as from the coming into operation of this Order, be construed with such adaptations and modifications as may be necessary to bring them into conformity with the provisions of this Order.

Existing laws.

(2) (a) The Governor may, by order published in the Gazette and made at any time before the expiration of one year commencing with the coming into operation of this Order, make such amendments to any existing law as appear to him to be necessary or expedient for bringing that law into conformity with the provisions of this Order or otherwise for giving effect or enabling to be given to those provisions.

(b) An order made under this subsection shall have effect from such date, not being earlier than the coming into operation of this Order, as may be specified therein, and may be revoked or amended in relation to any law affected thereby by the authority competent to repeal or amend that law.

(3) In this section "existing law" means any Act or Ordinance enacted by any legislature established for the Virgin Islands or the former Colony of the Leeward Islands, or any rule, regulation, order or other instrument made thereunder, that has effect as part of the law of the Virgin Islands immediately before the coming into operation of this Order.

68. The Standing Rules and Orders of the Legislative Council as in force immediately before this Order comes into operation shall, with such adaptations and modifications as may be necessary to bring them into conformity with this Order, be the Standing Orders of the Legislative Council continued in existence by section 1 of this Order and of the

Standing Orders.

Legislative Council established by Part IV of this Order as if they had been made in pursuance of section 35 of this Order.

Existing offices
and officers.

69. (1) Any office constituted for the Virgin Islands by the Governor under the Orders hereby revoked and subsisting immediately before the coming into operation of this Order shall, as from the coming into operation of this Order be deemed to be an office constituted by the Governor under section 9 of this Order.

(2) Any person who, immediately before the coming into operation of this Order, holds or is acting in the office of Governor or any office constituted as aforesaid or any public office otherwise constituted shall, as from such coming into operation, continue to hold or to act in that office as if he had been appointed to or to act in that office in accordance with the provisions of this Order.

(3) Any person to whom the last foregoing subsection applies who, before the coming into operation of this Order, has made any oath or affirmation required to be made by him before assuming the functions of his office shall not, by reason only of that subsection, be required to make a like oath or affirmation.

Transitional
provisions
relating to Bill
awaiting assent.

70. The provisions of section 42 of this Order shall apply to any Bill passed by the Legislative Council continued in existence by section 1 of this Order, but not assented to before the dissolution, as they would apply to a Bill passed by the Legislative Council established by this Order, and the provisions of section 43 of this Order shall apply to any Bill passed by that Legislative Council to which the Governor has given his assent as they would apply to a Bill passed by the Legislative Council established by this Order to which the Governor had given his assent under this Order.

Powers reserved
to Her Majesty.

71. There is reserved to Her Majesty's full power to make laws for the peace, order and good government of the Virgin Islands.

N.E. Leigh,
Clerk of the Privy Council.

THE SCHEDULE

Sections 3, 5, 20 and 36.

FORMS OF OATHS AND AFFIRMATIONS

1. Oath of Allegiance

I,, do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, according to law. So help me God.

2. Affirmation of Allegiance

I, do solemnly and sincerely affirm and declare that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, according to law.

3. Oath for due execution of office

I,, do swear that I will well and truly serve Her Majesty Queen Elizabeth the Second in the office of (here insert the description of the office). So help me God.

4. Affirmation for due execution of office

I,, do solemnly and sincerely affirm and declare that I will well and truly serve Her Majesty Queen Elizabeth the Second in the office of (here insert the description of the office).

EXPLANATORY NOTE

(This Note is not part of the Order).

This Order makes new provision for the Government of the Virgin Islands. In particular it provides for a Governor appointed by Her Majesty, an Executive Council and a Legislative Council. The Executive Council will include a Chief Minister and two other Ministers appointed on his advice. The Chief Minister will be the elected member of the Legislative Council recommended by a majority of the elected members of the majority political party, or, if there is no majority political party, the elected member best able to command the support of the majority of elected members. The Legislative Council will consist of a Speaker, nine elected members and one official, the Attorney General. However, the present Legislative Council will remain in existence until the next dissolution of the Council, though the Financial Secretary will cease to be a member.

[Gazetted 27th May, 1979]
