

2007 No. 1678

CARIBBEAN AND NORTH ATLANTIC TERRITORIES

The Virgin Islands Constitution Order 2007

<i>Made</i>	- - - -	<i>13th June 2007</i>
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SCHEDULE 1 — FORMS OF OATHS AND AFFIRMATIONS
SCHEDULE 2 — REVOCATIONS

At the Court at Buckingham Palace, the 13th day of June 2007

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred upon Her by sections 5 and 7 of the West Indies Act 1962^(a) and of all other powers enabling Her to do so, is pleased, by and with the advice of Her Privy Council, to order, and it is ordered, as follows:

Citation, commencement and establishment of Constitution

1.—(1) This Order may be cited as the Virgin Islands Constitution Order 2007.

(2) This Order shall come into force on the day on which the Legislative Council of the Virgin Islands is dissolved next following the day on which this Order is made, which day is in this Order referred to as “the appointed day”.

(a) 1962 c. 19.

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

- (a) the office of Premier shall continue to be called Chief Minister;
- (b) the Cabinet shall continue to be called the Executive Council; and
- (c) no person shall be appointed to the office of Cabinet Secretary.

THE CONSTITUTION OF THE VIRGIN ISLANDS

Whereas the people of the territory of the Virgin Islands have over centuries evolved with a distinct cultural identity which is the essence of a Virgin Islander;

Acknowledging that the society of the Virgin Islands is based upon certain moral, spiritual and democratic values including a belief in God, the dignity of the human person, the freedom of the individual and respect for fundamental rights and freedoms and the rule of law;

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

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

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

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

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

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

Now, therefore, the following provisions have effect as the Constitution of the Virgin Islands.

CHAPTER 1 INTERPRETATION

Interpretation

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

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

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

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

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

“election” means election of an elected member of the House of Assembly 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 Supreme Court Order 1967;

“legal practitioner” means a person qualified as a legal practitioner as prescribed by law;

“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 section 3, any office of emolument 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 House of Assembly, means the sittings of the House commencing when the House first meets after being constituted by this Constitution, or after its prorogation or dissolution at any time, and terminating when the House is next prorogued or is dissolved without having been prorogued;

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

- (2) For the purposes of this Constitution, a person belongs to the Virgin Islands if that person—
- (a) is born in the Virgin Islands and at the time of the birth his or her father or mother is or was—
 - (i) a British overseas territories citizen (or a British Dependent Territories citizen) by virtue of birth, registration or naturalisation in the Virgin Islands or by virtue of descent from a father or mother who was born in the Virgin Islands; or
 - (ii) settled in the Virgin Islands; and for this purpose “settled” means ordinarily resident in the Virgin Islands without being subject under the law in force in the Virgin Islands to any restriction on the period for which he or she may remain, but does not include persons on contract with the Government of the Virgin Islands or any statutory body or Crown corporation;
 - (b) is born in the Virgin Islands of a father or mother who belongs to the Virgin Islands by birth or descent or who, if deceased, would, if alive, so belong to the Virgin Islands;
 - (c) is a child adopted in the Virgin Islands by a person who belongs to the Virgin Islands by birth or descent;
 - (d) is born outside the Virgin Islands of a father or mother who is a British overseas territories citizen by virtue of birth in the Virgin Islands or descent from a father or mother who was born in the Virgin Islands or who belongs to the Virgin Islands by virtue of birth in the Virgin Islands or descent from a father or mother who was born in the Virgin Islands;
 - (e) is a British overseas territories citizen by virtue of registration in the Virgin Islands;
 - (f) is a person to whom a certificate has been granted under section 16 of the Immigration and Passport Act 1977 of the Virgin Islands (in this subsection referred to as “the Act”, and references to the Act or to any section thereof include references to any enactment amending, replacing or re-enacting the same) and has not been revoked under section 17 of the Act; and (without prejudice to the right of any person to apply for the grant of such a certificate under the Act) a British overseas territories citizen by virtue of naturalisation in the Virgin Islands has a right by virtue of this Constitution to apply for the grant of such a certificate;

- (g) is the spouse of a person who belongs to the Virgin Islands and has been granted a certificate under section 16 of the Act; or
- (h) was immediately before the commencement of this Constitution deemed to belong to the Virgin Islands by virtue of the Virgin Islands (Constitution) Order 1976(a).

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

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

References to public office

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

- (a) he or she is in receipt of a pension or other like allowance in respect of public service; or
- (b) he or she is in receipt of any remuneration or allowances in respect of his or her tenure of the office of Minister, Speaker, Deputy Speaker or member of the House of Assembly, or member of the Public Service Commission, the Teaching Service Commission, the Judicial and Legal Services Commission, or the Police Service Commission.

(2) 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 section 66(1)(a), this Constitution shall have effect accordingly as if that provision of that law were enacted herein.

(3) References in section 60 and Chapter 7 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.

Appointments

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

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

(3) Where this Constitution vests in any person power to make appointments to any office, a person may be appointed to that office, notwithstanding that some other person may be holding that office, when that other person is on leave of absence pending relinquishment of that office; and where two or more persons are holding the same office by reason of an appointment made in

(a) S.I. 1976/2145, amended by S.I. 1979/1603, 1982/151, 1991/2871, 1994/1638, 2000/1343.

pursuance of this subsection, then, for the purposes of any function conferred on the holder of that office, the person last appointed to the office shall be deemed to be the sole holder of the office.

Re-election or reappointment

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

Removal from office

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

Resignation

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

Power to amend or revoke instruments

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

CHAPTER 2

FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL

Fundamental rights and freedoms of the individual

9. Whereas every person in the Virgin Islands is entitled to the fundamental rights and freedoms of the individual;

Whereas those fundamental rights and freedoms are enjoyed without distinction of any kind, such as sex, race, colour, language, religion, political or other opinion, national, ethnic or social origin, association with a national minority, property, family relations, economic status, disability, age, birth, sexual orientation, marital or other status, subject only to prescribed limitations;

Whereas it is recognised that those fundamental rights and freedoms apply, 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, equality, liberty, security of the person and the protection of the law;
- (b) freedom of conscience, expression, movement, assembly and association; and
- (c) protection for private and family life, the privacy of the home and other property and from deprivation of property save in the public interest and on payment of fair compensation;

Now, therefore, it is declared that the subsequent provisions of this Chapter shall have effect for the purpose of affording protection to the aforesaid rights and freedoms, and to related rights and freedoms, subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the protected rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

Interpretation of Chapter 2

10.—(1) In this Chapter, unless the contrary intention appears—

“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 or tribunal having jurisdiction in the Virgin Islands, including Her Majesty in Council, but excepting, save in section 14, a court established by or under 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) any police force of the Virgin Islands;
- (c) the prison service of the Virgin Islands;

“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;

“minor” means a person who has not attained the age of eighteen years or such other age as may be prescribed for this purpose by any law;

“period of public emergency” means any period during which—

- (a) Her Majesty is at war; or
- (b) there is in force in the Virgin Islands a proclamation of emergency under section 27(1) or under any law enacted by the Legislature to like effect.

(2) In relation to any person who is a member of a disciplined force raised under a law enacted by the Legislature, nothing in or done under the authority of the disciplinary law of that force shall be held to contravene the provisions of this Chapter other than sections 11, 13 and 14.

(3) In relation to any person who is a member of a disciplined force raised otherwise than as aforesaid and lawfully present in the Virgin Islands, nothing in or done under the authority of the disciplinary law of that force shall be held to contravene any of the provisions of this Chapter.

Protection of right to life

11.—(1) Every person has a right to life which shall be protected by law.

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

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

- (a) for the defence of any person from violence;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or
- (c) for the purpose of suppressing a riot, insurrection or mutiny.

Equality before the law

12.—(1) Everyone is equal before the law and has the right to equal protection and benefit of the law.

(2) Subject to such limitations as are prescribed by law, equality includes the full and equal enjoyment of all rights and freedoms.

Protection from inhuman treatment

13. No person shall be subjected to torture or to inhuman or degrading treatment or punishment.

Protection from slavery and forced labour

- 14.**—(1) No person shall be subjected to slavery, servitude or forced labour.
- (2) For the purposes of subsection (1), “forced labour” does not include—
- (a) any labour required in consequence of the sentence or order of a court;
 - (b) any labour required of a member of a disciplined force in pursuance of his or her duties as such or, in the case of a person who has conscientious objections to service in a naval, military or air force, any labour that such person is required by law to perform in place of such service;
 - (c) labour required of a person while he or she is lawfully detained that is reasonably necessary in the interests of hygiene; or
 - (d) any labour required for the purpose of dealing with any situation arising during a period of public emergency or at a time when any other emergency or calamity threatens the well-being of the community, to the extent that the requiring of such labour as may be prescribed in emergency regulations is reasonably justifiable for that purpose.

Protection of right to personal liberty

- 15.**—(1) Every person has the right to liberty and security of the person.
- (2) No person shall be deprived of his or her personal liberty, save as may be authorised by law in any of the following cases—
- (a) in execution of the sentence or order of a court (whether of the Virgin Islands or otherwise) in respect of a criminal offence of which that person has been convicted or in respect of any other order of the court;
 - (b) for the purpose of bringing that person before a court in execution of the order of a court;
 - (c) upon reasonable suspicion of that person having committed or of being about to commit a criminal offence under any law;
 - (d) in the case of a minor, under the order of a court or in order to bring that person before a court or with the consent of his or her parent or legal guardian, for his or her education or welfare;
 - (e) for the purpose of preventing the spread of an infectious or contagious disease;
 - (f) in the case of a person who is, or reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his or her care or treatment or the protection of the community;
 - (g) for the purpose of preventing the unlawful entry of that person into the Virgin Islands, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from the Virgin Islands, or for the purpose of restricting that person while he or she is being conveyed through the Virgin Islands in the course of his or her extradition or removal as a convicted prisoner from one country to another.
- (3) Any person who is arrested or detained shall be informed promptly, as prescribed by law, in a language that he or she understands, of the reason for his or her arrest or detention and of his or her right to remain silent.
- (4) Any person who is arrested or detained shall have the right, at any stage and at his or her own expense, to retain and instruct without delay a legal practitioner of his or her own choice, which shall include the right to hold private communication with such legal practitioner and, in the case of a minor, to communicate with his or her parent or legal guardian.
- (5) Any person who is arrested or detained—
- (a) for the purpose of bringing him or her before a court in execution of the order of a court; or
 - (b) upon reasonable suspicion of his or her having committed or being about to commit a criminal offence under any law,

and who is not released, within the period prescribed by law, shall be brought promptly before a court.

(6) If any person arrested or detained as mentioned in subsection (5)(b) is not charged within the period or extended period prescribed by law, then, without prejudice to any further proceedings, he or she shall be released either unconditionally or on reasonable conditions, including such conditions as are reasonably necessary to ensure that he or she appears later for trial or for proceedings preliminary to trial.

(7) For the purpose of subsection (2)(a), a person charged with a criminal offence in respect of whom a special verdict has been returned that he or she was guilty of the act or omission charged but was insane when he or she 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.

Provisions to secure protection of law

16.—(1) If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

(2) Every person who is charged with a criminal offence shall—

- (a) be presumed to be innocent until he or she is proved guilty according to law;
- (b) be informed promptly, as prescribed by law, in a language that he or she understands and in detail, of the nature of the offence charged;
- (c) be given adequate time and opportunity for the preparation of his or her defence;
- (d) be permitted to defend himself or herself before the court in person or, at his or her own expense, by a legal practitioner of his or her own choice or where he or she is unable to afford to retain a legal practitioner and the interests of justice so require, by a legal practitioner at the public expense provided through an established public legal aid scheme as prescribed by law;
- (e) be entitled to examine in person or by his or her legal practitioner 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 or her behalf before the court on the same conditions as those applying to witnesses called by the prosecution;
- (f) be permitted to have without payment the assistance of an interpreter if he or she cannot understand or speak the language used at the trial of the charge; and
- (g) when charged on indictment in the High Court, have the right to trial by jury,

and except with that person's own consent the trial shall not take place in his or her absence, unless he or she so behaves in the court as to render the continuance of the proceedings in his or her presence impracticable and the court has ordered him or her to be removed and the trial to proceed in his or her absence.

(3) 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 severer in degree or description than the maximum penalty that might have been imposed for that offence at the time when it was committed.

(4) No person who shows that he or she has been tried by a competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence, save upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal.

(5) No person shall be tried for a criminal offence if he or she shows that he or she has been granted a pardon for that offence, either free or subject to lawful conditions.

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

(7) Every person who has been convicted by a court of a criminal offence shall have the right—

- (a) to receive free of charge a copy of his or her conviction record and any sentence imposed as a consequence thereof; and
- (b) to appeal to a superior court against the conviction or the sentence or both as may be prescribed by law.

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

(9) For the determination of the existence or extent of his or her civil rights and obligations, every person shall have the right to a fair hearing within a reasonable time before an independent and impartial court or other authority established by law.

(10) Except with the agreement of all the parties thereto, all proceedings for the trial of any criminal charge or for the determination of the existence or extent of any person's civil rights or obligations before any court or other authority, including the announcement of the decision, shall be held in public.

(11) Nothing in subsection (10) shall prevent the court or other authority from excluding from the proceedings persons other than the parties thereto and their legal representatives to such extent as the court or other authority may—

- (a) 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 the welfare of minors or the protection of the private lives of persons concerned in the proceedings; or
- (b) by law be empowered or required to do in the interests of defence, public safety, public order or public morality.

(12) Nothing in any law or done under its authority shall be held to contravene—

- (a) subsection (2)(a), to the extent that the law in question imposes on any person charged with a criminal offence the burden of proving particular facts;
- (b) subsection (2)(e), 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 (4), 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; but any court so trying and convicting such a member shall in imposing any sentence take into account any punishment imposed on that member under that disciplinary law.

Protection of right of prisoners to humane treatment

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

(2) Save where the interests of defence, public safety, public order, public morality, public health or the administration of justice otherwise require, unconvicted prisoners shall be segregated from convicted prisoners.

(3) Every juvenile prisoner shall be segregated from adult prisoners and shall be entitled to have any criminal proceedings against him or her pursued with the greatest possible expedition.

Protection of freedom of movement

18.—(1) A person shall not be deprived of his or her freedom of movement, that is to say, the right to move freely throughout the Virgin Islands, the right to reside in any part of the Virgin Islands, the right of a person who belongs to the Virgin Islands or on whom residence status has

been conferred by law to enter and leave the Virgin Islands, and immunity from expulsion from the Virgin Islands.

(2) Any restriction on a person's freedom of movement that is involved in his or her lawful detention shall not be held to contravene this section.

(3) Nothing in any law or done under its authority shall be held to contravene this section to the extent that the law in question makes provision—

- (a) for the imposition of restrictions on the movement or residence within the Virgin Islands or on the right to leave the Virgin Islands of persons generally or any class of persons that are reasonably justifiable in a democratic society in the interests of defence, public safety, public order, public morality or public health;
- (b) for the imposition of restrictions, by order of a court, on the movement or residence within the Virgin Islands of any person or on any person's right to leave the Virgin Islands either in consequence of that person having been found guilty of a criminal offence or for the purpose of ensuring that he or she appears before a court later for trial for a criminal offence or for proceedings relating to his or her extradition or lawful removal from the Virgin Islands;
- (c) for the imposition of restrictions on persons who do not belong to the Virgin Islands; but—
 - (i) no restriction may be imposed by virtue only of this paragraph on the right of any such person, so long as he or she is lawfully present in the Virgin Islands, to move freely throughout the Virgin Islands and to reside anywhere in the Virgin Islands;
 - (ii) no restriction may be imposed by virtue only of this paragraph on the right of any such person to leave the Virgin Islands; and
 - (iii) no such person shall be liable, by virtue only of this paragraph, to be expelled from the Virgin Islands unless the requirements specified in subsection (4) are satisfied;
- (d) for the imposition of restrictions on the acquisition or use by any person of any land or other property in the Virgin Islands and the imposition of any fee in respect thereof;
- (e) for the imposition of restrictions on the movement or residence within the Virgin Islands or on the right to leave the Virgin Islands of any public officer that are reasonably required for the proper performance of his or her functions;
- (f) for the removal of a person from the Virgin Islands 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 of which he or she has been convicted, or to relocate to some other country for the protection of the person with his or her consent; or
- (g) for the imposition of restrictions on the right of any person to leave the Virgin Islands that are reasonably justifiable in a democratic society in order to secure the fulfilment of any obligations imposed on that person by law.

(4) The requirements to be satisfied for the purposes of subsection (3)(c)(iii) are as follows—

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

(5) For the purposes of subsection (3)(e), “law” in subsection (3) includes directions in writing regarding the conduct of public officers generally or any class of public officer issued by the Government of the Virgin Islands.

Protection of private and family life and privacy of home and other property

19.—(1) Every person has the right to respect for his or her private and family life, his or her home and his or her correspondence, including business and professional communications.

(2) Except with his or her own consent, no person shall be subjected to the search of his or her person or property or the entry by others on his or her premises.

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

- (a) in the interests of defence, public safety, public order, public morality, public health, town and country planning, the development of mineral resources, or the development or utilisation of any other property in such manner as to promote the public benefit;
- (b) for the purpose of protecting the rights and freedoms of other persons;
- (c) to enable an officer or agent of the Government of the Virgin Islands, 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 on them for the purpose of any tax, rate or due or in order to carry out work connected with any property that is lawfully on those premises and that belongs to the Government of the Virgin Islands or that authority or body corporate, as the case may be;
- (d) to authorise, for the purpose of enforcing the judgment or order of a court in any proceedings, the search of any person or property by order of a court or the entry upon any premises by such order; or
- (e) for the prevention or detection of offences against the criminal law or the customs law.

Protection of the right to marry and found a family

20.—(1) Every man and woman of a marriageable age has the right to marry and found a family in accordance with laws enacted by the Legislature.

(2) No person shall be compelled to marry without his or her free and full consent.

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

- (a) in the interests of public order, public morality or public health;
- (b) for regulating, in the public interest, the procedures and modalities of marriage; or
- (c) for protecting the rights and freedoms of other persons.

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

- (a) as between themselves, both during the marriage and, if the marriage is dissolved, at its dissolution; and
- (b) as regards their children, where there are any, both during the marriage and, if the marriage is dissolved, at and after its dissolution;

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

Protection of freedom of conscience

21.—(1) No person shall be hindered in the enjoyment of his or her freedom of conscience.

(2) Freedom of conscience includes freedom of thought and of religion, freedom to change one’s religion or belief, and freedom, either alone or in community with others and either in public or in

private, to manifest and propagate one's religion or belief in worship, teaching, practice and observance.

(3) No religious community or denomination shall be prevented from or hindered in providing religious instruction for persons of that community or denomination in the course of any education provided by it whether or not it is in receipt of any government subsidy, grant or other form of financial assistance designed to meet, in whole or in part, the cost of such education.

(4) No person shall be compelled to take any oath which is contrary to his or her religion or belief or to take any oath in a manner which is contrary to his or her religion or belief, although such person may be required to make an affirmation in lieu of taking an oath.

(5) Nothing in any law or done under its authority shall be held to contravene this section to the extent that it is reasonably justifiable in a democratic society—

- (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 of any person to observe and practise his or her religion or belief without the unsolicited intervention of adherents of any other religion or belief.

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

Protection of the right to education

22.—(1) This section is without prejudice to section 21.

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

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

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

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

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

Protection of freedom of expression

23.—(1) No person shall be hindered in the enjoyment of his or her freedom of expression.

(2) A person's freedom of expression includes freedom to hold opinions without interference, freedom to receive information and ideas without interference, freedom to disseminate information and ideas without interference (whether to the public generally or to any person or class of persons) and freedom from interference with his or her correspondence or other means of communication.

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

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

- (b) for the purpose of protecting the reputations, rights and freedoms of other persons, or the private lives of persons concerned in legal proceedings or proceedings before statutory tribunals, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, or regulating telecommunications, posts, broadcasting or public shows; or
 - (c) that imposes restrictions on public officers that are reasonably required for the proper performance of their functions.
- (4) For the purposes of subsection (3)(c), “law” in subsection (3) includes directions in writing regarding the conduct of public officers generally or any class of public officer issued by the Government of the Virgin Islands.

Protection of freedom of assembly and association

24.—(1) No person shall be hindered in the enjoyment of his or her freedom of peaceful assembly and association.

(2) The freedom of peaceful assembly and association includes the right to assemble freely and associate with other persons and, in particular, to form or belong to political parties or trade unions or other lawful associations for the promotion and protection of his or her interests.

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

- (a) in the interests of defence, public safety, public order, public morality or public health;
- (b) for the purpose of protecting the rights and freedoms of other persons; or
- (c) for the imposition of restrictions on public officers that are reasonably required for the proper performance of their functions.

(4) For the purposes of subsection (3)(c), “law” in subsection (3) includes directions in writing regarding the conduct of public officers generally or any class of public officer issued by the Government of the Virgin Islands.

Protection from deprivation of property

25.—(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 in accordance with law and where—

- (a) the taking of possession or acquisition is necessary or expedient in the interests of defence, public safety, public order, public morality, public health, or the development or utilisation of any property in such manner as to promote the public benefit;
- (b) there is reasonable justification for any hardship that may result to any person having an interest in or right to or over the property;
- (c) provision is made by a law applicable to the taking of possession or acquisition—
 - (i) for the prompt payment of adequate compensation; and
 - (ii) securing to any person having an interest in or right to or over the property a right of access to the High Court, whether direct or on appeal from a tribunal or other authority, for the determination of his or her interest or right, the legality of the taking of possession or acquisition and the amount of compensation to which he or she is entitled, and for the purpose of obtaining prompt payment of that compensation; and
- (d) the same rights of appeal as are accorded generally to parties to civil proceedings in the High Court sitting as a court of original jurisdiction are given to any party to proceedings in that Court relating to such a claim.

(2) No person who is entitled to compensation under this section shall be prevented from remitting, within a reasonable time after he or she has received any amount of that compensation, the whole of that amount to any country of his or her choice outside the Virgin Islands.

- (3) Nothing in any law or done under its authority shall be held to contravene subsection (1)—
- (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, statutory contribution, levy 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) by way of the taking of a sample for the purposes of any law;
 - (v) when the property consists of an animal, upon its being found trespassing or straying;
 - (vi) in the execution of a judgment or order of a court;
 - (vii) 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;
 - (viii) in consequence of any law with respect to the limitation of actions or prescription;
 - (ix) 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 purpose of carrying out on it work of reclamation, erection of a utility service item for the public benefit, drainage, soil conservation or the conservation of other natural resources or work relating 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),

provided that the provision or, as the case may be, the thing done under its authority is reasonably justifiable in a democratic society;

- (b) to the extent that the law in question makes provision for the taking of possession of, or the acquisition of any interest in or right to or over, any of the following property, that is to say—
 - (i) enemy property;
 - (ii) property vested in the Crown as *bona vacantia*;
 - (iii) property of a deceased person or a person who is unable, by reason of legal incapacity, to administer it personally, for the purpose of its administration for the benefit of the persons entitled to the beneficial interest in it;
 - (iv) 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 that person or body and, subject thereto, for the benefit of other persons entitled to the beneficial interest in the property; or
 - (v) 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 purpose of giving effect to the trust.

(4) Nothing in any law or done under its authority shall be held to contravene 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 to or over property, where that property, interest or right is held by a body corporate established by law for public purposes in which no moneys have been invested other than moneys provided from public funds.

Protection from discrimination

26.—(1) In this section, the expressions—

- (a) “discriminatory” means affording different treatment to different persons on any ground such as sex, race, colour, language, religion, political or other opinion, national, ethnic or

social origin, association with a national minority, property, family relations, economic status, disability, age, birth, sexual orientation, marital or other status; and

- (b) “public authority” means any statutory body or company or association in which the Government of the Virgin Islands has an interest and which performs a public function or duty.

(2) Subject to subsections (4), (5) and (7), no law shall make any provision that is discriminatory either of itself or in its effect.

(3) Subject to subsections (6), (7) and (8), no person shall be treated in a discriminatory manner by any person acting under any written law or performing the functions of any public office or any public authority.

(4) Subsection (2) shall not apply to any law so far as the law makes provision—

- (a) for the imposition of taxation or appropriation of revenue by the Government of the Virgin Islands or any local authority or body for local purposes;
- (b) with respect to the entry into or exclusion from, or the employment, engaging in any business or profession, movement or residence within, the Virgin Islands of persons who do not belong to the Virgin Islands, or for any other purpose with respect to such persons to the extent that the provision is reasonably justifiable in a democratic society;
- (c) for the application, in the case of persons of any such description as is mentioned in subsection (1)(a) (or of persons connected with such persons), of the law with respect to adoption, marriage, divorce, burial, devolution of property on death or other like matters that is the personal law applicable to persons of that description; or
- (d) whereby persons of any such description as is mentioned in subsection (1)(a) 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 in any law shall be held to contravene subsection (2) to the extent that it makes provision with respect to qualifications (not being qualifications specifically relating to any such description as is mentioned in subsection (1)(a)) 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 law for public purposes.

(6) Subsection (3) 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).

(7) Nothing in any law or done under its authority shall be held to contravene this section to the extent that the law in question makes provision whereby persons of any such description as is mentioned in subsection (1)(a) may be subjected to any restriction on the rights and freedoms guaranteed by section 18, 19, 20, 21, 22, 23 or 24 if that restriction would, in accordance with that section, be a restriction authorised for the purposes of that section on the ground that—

- (a) the provision by or under which it is imposed is reasonably required in the interests of a matter, or for a purpose, specified in that section; and
- (b) the provision and the restriction imposed under it are reasonably justifiable in a democratic society.

(8) Nothing in subsection (3) 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.

Provisions for periods of public emergency

27.—(1) A period of public emergency may be declared by the Governor, by proclamation published in the manner provided in subsection (2), when—

- (a) the well-being or security of the Virgin Islands is threatened by war, invasion, general insurrection, public disorder, natural disaster or other public emergency; and

- (b) the declaration is considered necessary by the Governor to maintain or restore peace and order.
- (2) A proclamation shall be taken to be published if it is published in the *Gazette* or in a newspaper published in the Virgin Islands, or if it is posted in prominent public places or announced on the radio.
- (3) Without prejudice to the power of the Legislature to make laws under this Constitution, during a period of public emergency the Governor may make such regulations for the Virgin Islands as appear to him or her to be necessary or expedient for securing the public safety, the defence of the Virgin Islands or the maintenance of public order, or for maintaining supplies and services essential to the life of the community.
- (4) Regulations made under subsection (3) shall—
 - (a) have effect only prospectively;
 - (b) have effect, subject to this section, notwithstanding the provisions of any other law in force in the Virgin Islands or any rule of law having effect therein;
 - (c) unless previously revoked, expire at the end of the period of public emergency during which they were made unless provision for their continuance in force (without or without modification) is made by the Legislature.
- (5) Nothing in any law or done under its authority shall be held to contravene any of the provisions of this Chapter other than sections 11, 13, 14(1), 16(2)(a), 16(3), 16(4), 16(5) and 16(6) 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 the Virgin Islands during that period.
- (6) Before exercising any function under subsection (1) or (3) or under any law enacted by the Legislature to like effect, the Governor shall consult the Cabinet or, if that is not practicable in the circumstances, the Premier; but if in the judgement of the Governor it is impracticable for him or her to consult either the Cabinet or the Premier, the function shall be exercised by the Governor acting in his or her discretion.
- (7) Where the Governor has consulted the Cabinet or the Premier under subsection (6), the Governor shall, save in matters falling within the Governor's special responsibilities under section 60(1), act in accordance with any advice given to him or her by the Cabinet or the Premier, unless instructed otherwise by a Secretary of State.
- (8) Where any proclamation of emergency has been made by the Governor under subsection (1), a copy of the proclamation shall as soon as practicable be laid before and debated in the House of Assembly, and if the House is not due to meet within five days of the making of that proclamation it shall meet within that period or as soon as practicable thereafter.
- (9) A proclamation of emergency shall, unless it is sooner revoked by the Governor, cease to be in force at the expiration of a period of fourteen days beginning on the date on which it was made or such longer period as may be provided under subsection (10), but without prejudice to the making of another proclamation of emergency at or before the end of that period.
- (10) If at any time while a proclamation of emergency is in force (including any time while it is in force by virtue of this subsection) a resolution is passed by the House of Assembly approving its continuance in force for a further period not exceeding three months, beginning on the date on which it would otherwise expire, the proclamation shall, if not sooner revoked, continue in force for that further period.
- (11) Nothing contained in this section or any emergency regulations shall be construed to preclude the House of Assembly from—
 - (a) meeting whenever practicable in accordance with its Standing Orders; and
 - (b) directing that reports relating to the emergency, including the implementation of any emergency regulations, be prepared and presented in such manner and within such periods to the House of Assembly as the House may determine.

Protection of persons detained under emergency laws

28.—(1) When a person is detained by virtue of any law in relation to a period of public emergency the following provisions shall apply—

- (a) notification shall, not more than ten days after the commencement of his or her detention, be published in a public place (and thereafter as soon as possible in the *Gazette*) stating that he or she has been detained and giving particulars of the provision of law by virtue of which his or her detention is authorised;
- (b) he or she shall (if not sooner released), as soon as reasonably practicable and in any case not more than four days after the commencement of his or her detention, be informed, in a language that he or she understands, of the grounds on which he or she is detained and furnished with a written statement;
- (c) his or her case shall, not more than thirty days after the commencement of his or her detention and thereafter during the detention at intervals of not more than three months, be reviewed by an independent and impartial tribunal established by law and presided over by a person appointed by the Chief Justice;
- (d) he or she shall be afforded reasonable opportunity to consult a legal practitioner of his or her own choice and to hold private communication with such legal practitioner; and
- (e) he or she shall, at the hearing of his or her case by the tribunal appointed for its review, be permitted to appear in person or by a legal practitioner of his or her own choice.

(2) For the purpose of subsection (1)(d) and (e), if the detained person is unable to retain a legal practitioner of his or her own choice, the tribunal may approve such person as it deems fit to make representations to it, provided that nothing in subsection (1)(d) or (e) shall be construed as entitling a detained person to legal representation at public expense.

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

Protection of the environment

29. Every person has the right to an environment that is generally not harmful to his or her health or well-being and to have the environment protected, for the benefit of present and future generations, through such laws as may be enacted by the Legislature including laws to—

- (a) prevent pollution and ecological degradation;
- (b) promote conservation; and
- (c) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

Protection of children

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

Enforcement of protective provisions

31.—(1) If any person alleges that any of the foregoing provisions of this Chapter has been, is being or is likely to be contravened in relation to him or her (or, in the case of a person who is detained, if any other person alleges such a contravention in relation to the detained person), then, without prejudice to any other action with respect to the same matter 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 under subsection (1); and
- (b) to determine any question arising in the case of any person that is referred to it under subsection (7),

and may make such declarations 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 foregoing provisions of this Chapter to the protection of which the person concerned is entitled.

(3) The High Court may decline to exercise its powers under subsection (2) if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law.

(4) Without prejudice to the generality of subsections (2) and (3), where, in exercise of its powers under those subsections, the High Court determines that one of the foregoing provisions of this Chapter has been contravened in relation to any person, it may order, or, as the case may be, declare that the court which made the reference to it under subsection (7) (“the referring court”) has the power to order (within such limits as the High Court may declare), the award to that person of such damages as the High Court or, as the case may be, the referring court considers just and appropriate.

(5) An award of damages may not be made under subsection (4) in respect of the enactment of any law by the Legislature or the making, under such a law, of any subordinate legislation, but such an award may be made in respect of anything done by any person acting by virtue of any such law or subordinate legislation or in performing the functions of any public office or any public authority.

(6) For the purposes of subsection (5), “public authority” has the meaning prescribed in section 26(1)(b).

(7) If in any proceedings in any court (other than the High Court, the Court of Appeal, Her Majesty in Council or a court-martial) any question arises as to the contravention of any of the foregoing provisions of this Chapter, 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 the opinion of the court in which the question arose, the raising of the question is merely frivolous or vexatious.

(8) Where any question is referred to the High Court under subsection (7), the High Court shall give its decision on the question and the referring court 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.

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

(10) The Legislature may by law confer on 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 on it by this section.

(11) The Legislature may by law make, or provide for the making of, provision with respect to the practice and procedure—

- (a) of the High Court in relation to the jurisdiction and powers conferred on it by or under this section;
- (b) of the High Court or the Court of Appeal in relation to appeals under this section from determinations of the High Court or the Court of Appeal; and
- (c) of other courts in relation to references to the High Court under subsection (7),

including provision with respect to the time within which any application, reference or appeal shall or may be made or brought.

Proceedings which might affect freedom of conscience

32. If a court's determination of any question arising under this Chapter might affect the exercise by a religious organisation (itself or its members collectively) or by an individual of the right to freedom of conscience as defined and protected by section 21, it must have particular regard to the importance of that right.

Proceedings which might affect freedom of expression

33.—(1) This section applies if a court is considering whether to grant any relief which, if granted, might affect the exercise of the right to freedom of expression as defined and protected by section 23.

(2) No such relief shall be granted so as to restrain publication before trial, unless the court considers and makes an order that the interests of justice will not be served by such publication.

(3) The court shall have particular regard to the importance of the right to freedom of expression and, where the proceedings relate to material which the respondent claims, or which appears to the court, to be journalistic, literary or artistic material (or to conduct connected with such material), to—

- (a) the extent to which—
 - (i) the material has become, or is about to become, available to the public; or
 - (ii) it is, or would be, in the public interest for the material to be published; and
- (b) any relevant privacy code.

Establishment of a Human Rights Commission

34.—(1) There may be established by law a human rights commission (in this section referred to as "the commission").

(2) The composition, powers and duties of the commission (which shall not derogate from the provisions of this Chapter) shall be such as may be prescribed by the law establishing it and may include the following—

- (a) the receipt and investigation of complaints of breaches or infringements of any right or freedom referred to in this Chapter;
- (b) the provision of a forum for dealing with, and participation of the commission in promoting conciliation with respect to, complaints and disputes concerning any matter relating to this Chapter;
- (c) issuing guidance on procedures for dealing with any complaints of breaches or infringements of rights and freedoms referred to in this Chapter;
- (d) imparting knowledge to the public with respect to the rights and freedoms referred to in this Chapter or in relation to any international instrument or activity relating to human rights; and
- (e) preparing and submitting periodically reports concerning its activities to the Legislature.

(3) The power of the commission to deal with any matter under this Chapter shall be exercised only with the agreement or concurrence of the persons concerned therewith.

(4) Nothing contained in or done pursuant to any law establishing the commission shall—

- (a) oblige a person to refer any complaint of a breach or infringement of any right or freedom referred to in this Chapter to the commission; or
- (b) prevent a person from seeking redress directly from the court in relation to any breach or infringement of a right or freedom referred to in this Chapter, and the fact that such person had previously sought the assistance of the commission with respect to such breach or infringement shall not be a bar.

CHAPTER 3
THE GOVERNOR

Governor

35.—(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.

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

(3) Subject to the provisions of this Constitution and of any other law by which powers or duties are conferred on the Governor, the Governor shall do and execute all things that belong to his or her office (including the exercise of any powers with respect to which the Governor is empowered by this Constitution to act in his or her discretion) according to such instructions, if any, as Her Majesty may from time to time see fit to give him or her; but the question whether or not the Governor has in any matter complied with any such instructions shall not be enquired into in any court.

(4) 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 Schedule 1.

Deputy Governor

36.—(1) There shall be a Deputy Governor who shall be such person, being a Virgin Islander as defined in section 65(2), as Her Majesty may designate as such 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 if the person holding that office is—

- (a) acting in the office of Governor under section 37;
- (b) absent from the Virgin Islands; or
- (c) for any other reason unable to perform the functions of the office of Deputy Governor,

such person as Her Majesty may designate by instructions given through a Secretary of State shall act in the office of Deputy Governor during Her Majesty's pleasure.

Acting Governor

37.—(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 or her 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 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 35(4) 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 or her that he or she 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 or her.

(4) The Governor or the Deputy Governor shall not, for the purposes of this section or section 36, be regarded as absent from the Virgin Islands or as unable to perform the functions of his or her office—

- (a) by reason that he or she is in passage from one part of the Virgin Islands to another;
- (b) at any time when there is a subsisting appointment of a deputy under section 39; 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 means the person holding the office of Deputy Governor.

Functions of Deputy Governor

38.—(1) Subject to subsection (2), the Deputy Governor shall—

- (a) assist the Governor in the exercise of his or her functions relating to matters for which the Governor is responsible under section 60;
- (b) assist the Governor in the exercise of such of his or her other functions, being functions in the exercise of which the Governor is not obliged to act in accordance with the advice of any other person or authority, as the Governor, acting in his or her discretion, may direct; and
- (c) perform such other functions, not of a ministerial nature, as (subject to this Constitution and any other law) may be assigned to the Deputy Governor, at the request of the Premier, by the Governor acting in his or her discretion.

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

(3) The power and authority of the Governor shall not be affected by any authority of the Deputy Governor under subsection (2) and, subject to the provisions of this Constitution and of any other law by which any function which the Deputy Governor is authorised to exercise is conferred, the Deputy Governor shall comply with such instructions relating to the exercise of that function as the Governor, acting in his or her discretion, may from time to time address to the Deputy Governor; but the question whether or not the Deputy Governor has in any matter complied with any such instructions shall not be enquired into in any court.

(4) Any authority given under subsection (2) may at any time be varied or revoked by Her Majesty by instructions given through a Secretary of State or by the Governor, acting in his or her discretion, by writing under his or her hand.

(5) In subsection (2) the reference to any functions of the office of Governor does not include a reference to—

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

Deputy to Governor

39.—(1) Whenever the Governor—

- (a) has occasion to be absent from the seat of Government but not from the Virgin Islands;
- (b) has occasion to be absent from the Virgin Islands for a period which he or she has reason to believe will be of short duration; or

- (c) is suffering from any illness which he or she has reason to believe will be of short duration,

the Governor may, acting in his or her discretion, by instrument under the public seal, appoint the Deputy Governor, or if the Deputy Governor is not available any other person in the Virgin Islands who is a Virgin Islander as defined in section 65(2), to be his or her deputy during such absence or illness and in that capacity to perform on his or her behalf such of the functions of the office of Governor as may be specified in that instrument.

(2) The power and authority of the Governor shall not be affected by the appointment of a deputy under this section, and a deputy shall comply with such instructions as the Governor, acting in his or her discretion, may from time to time address to the deputy; but the question whether or not a deputy has in any matter complied with 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 or she is appointed, and the appointment may be revoked at any time by Her Majesty by instructions given through a Secretary of State or by the Governor, acting in his or her discretion.

Exercise of Governor's functions

40.—(1) Subject to this section, the Governor shall consult with the Cabinet in the exercise of all functions conferred on him or her by this Constitution or any other law for the time being in force in the Virgin Islands, except—

- (a) when acting under instructions given to him or her by Her Majesty through a Secretary of State;
- (b) when exercising any function conferred on him or her by this Constitution or any such other law which is expressed to be exercisable by the Governor in his or her discretion, or in accordance with the advice of, or after consultation with, any person or authority other than the Cabinet; or
- (c) in any case which, in his or her opinion, involves a matter for which he or she is responsible under section 60;

but in exercising his or her powers in relation to matters to which paragraph (c) applies, the Governor shall consult with the Premier.

(2) The Governor shall not be obliged to consult with the Cabinet or the Premier if, in his or her judgement—

- (a) Her Majesty's service would sustain material prejudice;
- (b) the matter is not materially significant so as to require consultation; or
- (c) the urgency of the matter requires the Governor to act before he or she can consult the Cabinet or the Premier,

but in any case falling within paragraph (c) the Governor shall, as soon as practicable, communicate to the Cabinet the measures which he or she has adopted and the reasons for them.

(3) In any case in which the Governor is required under this section to consult the Cabinet, the Governor shall act in accordance with the advice of the Cabinet unless in his or her opinion such advice would affect a matter for which he or she is responsible under section 60.

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

(5) Whenever the Governor, in pursuance of subsection (3), acts contrary to the advice given by the Cabinet, he or she shall, as soon as practicable, report his or her action and the reasons for it to a Secretary of State.

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

Crown lands

41.—(1) Subject to any law for the time being in force in the Virgin Islands, the Governor or the Minister when duly authorised by the Governor by writing under his or her hand, in Her Majesty's name and on Her Majesty's behalf, may, under the public seal, make grants and dispositions 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; but any such grant or disposition shall require the prior approval of the Cabinet.

(2) The Minister shall have responsibility for administering all lands and other property referred to in subsection (1).

(3) In this section "the Minister" means the Minister charged with responsibility for Crown lands.

Powers to constitute offices and make appointments, etc

42. Subject to Chapter 7 and 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—

- (a) constitute offices for the Virgin Islands and make appointments to them, to be held during Her Majesty's pleasure; and
- (b) dismiss any person so appointed or take such disciplinary action in relation to him or her as the Governor may think fit.

Powers of pardon, etc

43.—(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 the powers conferred on the Governor by this section the Governor shall consult with the Committee established by section 44, but the Governor shall decide whether to exercise any of those powers in any case in his or her own deliberate judgement, whether the members of the Committee concur in his or her decision or otherwise.

Advisory Committee on the Prerogative of Mercy

44.—(1) There shall be in and for the Virgin Islands an Advisory Committee on the Prerogative of Mercy (in this section and section 43 referred to as "the Committee"), which shall consist of the Attorney General, the Director of Health Services and four members appointed by the Governor after consultation with the Premier.

(2) The Committee shall not be summoned except by the authority of the Governor, acting in his or her 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) shall become vacant if the Governor, acting after consultation with the Premier, revokes that appointment.

(5) Subject to subsection (3), the Committee shall not be disqualified for the transaction of business by reason of any vacancy in its membership, 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 this section the Committee may regulate its own proceedings.

The public seal

45. The Governor shall keep and use the public seal for sealing all things that require to be sealed.

CHAPTER 4 THE EXECUTIVE

Executive authority of the Virgin Islands

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

(2) Subject to this Constitution, 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 or her.

(3) Nothing in subsection (2) shall operate so as to prejudice 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.

Cabinet

47.—(1) There shall be a Cabinet in and for the Virgin Islands which shall consist of the Premier, four other Ministers and one *ex officio* member, namely the Attorney General.

(2) The number of Ministers referred to in subsection (1) may be increased by a law made in pursuance of section 63(2) which increases the number of elected members of the House of Assembly; but in no circumstances may the number of Ministers exceed two-fifths of the total number of elected members of the House.

(3) The Cabinet shall have responsibility for the formulation of policy, including directing the implementation of such policy, insofar as it relates to every aspect of government, except those matters for which the Governor has special responsibility under section 60, and the Cabinet shall be collectively responsible to the House of Assembly for such policies and their implementation.

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

Meetings of the Cabinet

48. The Cabinet shall meet regularly at such times as its rules of procedure may prescribe, and shall also meet whenever the Premier, or the Governor, acting in his or her discretion, where practicable after consultation, so requests; and upon receipt of such request the Cabinet Secretary shall summon the Cabinet.

Proceedings in the Cabinet

49.—(1) The Governor shall, so far as practicable, attend and preside at meetings of the Cabinet.

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

(3) Subject to section 63(4), no business shall be transacted at any meeting of the Cabinet if there are less than three Ministers present, one of whom shall be the Premier or the Minister performing the functions of the Premier under section 55.

(4) The Cabinet Secretary, the Governor and the Premier shall form a Cabinet Steering Group for the purpose of setting the agenda of the Cabinet; the Governor and the Premier shall each be entitled to inscribe items on the agenda and the Cabinet Secretary shall comply accordingly.

(5) In the absence of any member of the Cabinet Steering Group the person performing the functions of that member shall act in his or her place.

(6) The Attorney General shall not be entitled to vote in the Cabinet.

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

Summoning of persons to the Cabinet

50.—(1) Whenever any business before the Cabinet renders the presence of a public officer desirable, the Premier may summon such public officer to a meeting of the Cabinet; and the Premier shall summon such an officer if the Governor, acting in his or her discretion, so requests.

(2) Where a matter before the Cabinet concerns or relates to a statutory body and the presence of an officer of the statutory body is considered desirable, the Premier may summon that officer to a meeting of the Cabinet.

Cabinet Secretary

51.—(1) There shall be—

- (a) a Cabinet Office, which shall be an office in the Government of the Virgin Islands; and
- (b) a Cabinet Secretary, whose office shall be a public office, who shall be a person who is a Virgin Islander as defined in section 65(2) and who shall be appointed in accordance with section 92(5), (6) and (7).

(2) The Cabinet Secretary shall have charge of the Cabinet Office, attend meetings of the Cabinet and be responsible for keeping the minutes of the meetings of the Cabinet and for conveying the conclusions reached at the meetings to the appropriate person or authority.

(3) The Cabinet Secretary shall—

- (a) provide such policy advice and technical support to the Cabinet as the Cabinet may require;
- (b) transmit copies of all papers submitted for consideration by the Cabinet to its members;
- (c) inform all its members of the summoning of any meeting of the Cabinet and of the matters to be discussed at any such meeting;
- (d) furnish all its members, as soon as practicable after each meeting of the Cabinet, with a copy of the confirmed minutes of the previous meeting showing the matters discussed and the conclusions reached at the meeting;
- (e) promote and facilitate adherence to the rules of procedure of the Cabinet;
- (f) monitor the implementation of Cabinet decisions and report periodically to the Cabinet in respect thereof; and
- (g) perform such other functions as are incidental to the functions of the Cabinet Secretary.

(4) The functions conferred on the Cabinet Secretary by subsection (3)(b), (c) and (d) may be exercised by the Cabinet Secretary in person or by officers subordinate to him or her acting under and in accordance with his or her general or special instructions.

Appointment of Ministers

52.—(1) The Premier shall be appointed by the Governor as follows—

- (a) if a political party gains a majority of the seats of elected members of the House of Assembly the Governor shall appoint as Premier the elected member of the House recommended by a majority of the elected members of the House who are members of that party;
- (b) if no political party gains such a majority or if no recommendation is made under paragraph (a), the Governor, acting in his or her discretion, shall appoint as Premier the elected member of the House of Assembly who, in his or her judgement, is best able to command the support of a majority of the elected members of the House.

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

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

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

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

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

Tenure of office of Ministers

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

(2) The Premier shall vacate his or her office if, after the polling in a general election and before the House of Assembly first meets thereafter, the Governor, acting in accordance with section 52(1), informs the Premier that he or she is about to appoint another person as the Premier.

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

- (a) he or she ceases to be a member of the House of Assembly for any reason other than a dissolution;
- (b) he or she is not an elected member of the House of Assembly when it first meets after a general election;
- (c) he or she is required under section 67(4) to cease to perform his or her functions as a member of the House of Assembly; or
- (d) he or she resigns it by writing under his or her hand addressed to the Premier or, in the case of the Premier, he or she resigns it by writing under his or her hand addressed to the Governor.

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

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

Absence of Ministers from the Virgin Islands

54. The Premier shall give written notice to the Governor before being absent from the Virgin Islands, and any other Minister shall obtain the written permission of the Premier before being absent from the Virgin Islands; but where in either case the Premier or Minister is to be absent from the Virgin Islands for a period not exceeding forty-eight hours, prior verbal notification shall be given to the Governor or the Premier, as the case may be.

Performance of functions of Premier in certain events

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

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

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

(4) If the Cabinet advises the Governor that both the Premier and the Deputy Premier are unable to perform their functions by reason of absence or illness, the Governor shall authorise another Minister designated by the Premier (or, if the Premier makes no such designation, appointed by the Governor on the advice of the Cabinet, and where the Cabinet fails to give such advice within twenty-four hours of the Governor seeking such advice, selected by the Governor in his or her discretion) to perform the functions of the office of Premier; and the Governor shall revoke this authority if the Cabinet advises him or her that the Premier or the Deputy Premier is again able to perform his or her functions.

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

Assignment of responsibilities to Ministers

56.—(1) The Governor shall, acting in accordance with the advice of the Premier, by directions in writing, assign to any Minister responsibility for the conduct (subject to this Constitution and any other law) of any business of the Government of the Virgin Islands, including responsibility for the administration of any department of government.

(2) Without prejudice to section 60(2), (3) and (4), a Minister shall not be assigned responsibility under this section for any of the matters mentioned in section 60(1).

(3) The Governor may not confer on any Minister Authority to exercise any function that is conferred or imposed by this Constitution or any other law on the Governor or any person or authority other than a Minister; but nothing in this subsection affects the power of the Legislature under section 71.

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

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

(6) A Minister assigned responsibility for any matter under this section shall exercise his or her responsibility in accordance with the policies of the Government of the Virgin Islands as

determined by the Cabinet and in accordance with the collective responsibility of the members of the Cabinet for the policies and decisions of the Government.

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

National Security Council

57.—(1) There shall be in and for the Virgin Islands a National Security Council which shall consist of—

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

(2) A Minister appointed under subsection (1)(c) shall vacate his or her seat on the National Security Council if—

- (a) his or her office becomes vacant under section 53; or
- (b) the Governor so directs in writing, acting in accordance with the advice of the Premier.

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

(4) The Commissioner of Police shall—

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

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

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

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

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

Attorney General

58.—(1) There shall be an Attorney General of the Virgin Islands, whose office shall be a public office and who shall be appointed in accordance with section 95.

(2) The Attorney General shall be the principal legal adviser to the Government of the Virgin Islands.

Director of Public Prosecutions

59.—(1) There shall be a Director of Public Prosecutions, whose office shall be a public office and who shall be appointed in accordance with section 95.

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

- (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 herself or any other person or authority.

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

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

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

(6) In the exercise of the powers conferred on him or her by this section and section 88(2) the Director of Public Prosecutions shall not be subject to the direction or control of any other person or authority.

Governor's special responsibilities

60.—(1) The Governor shall be responsible for the conduct (subject to this Constitution and 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, subject to subsection (4);
- (b) defence, including the armed forces;
- (c) internal security, including the Police Force, without prejudice to section 57;
- (d) the terms and conditions of service of persons holding or acting in public offices, without prejudice to section 92; and
- (e) the administration of the courts;

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

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

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

(4) Notwithstanding subsection (3), the Governor shall, by directions in writing, delegate to the Premier or to any other Minister designated by the Governor on the advice of the Premier, on the

terms and conditions set out in subsection (5), responsibility for the conduct of external affairs as they relate to any matters that fall under the portfolios of Ministers, including—

- (a) the Caribbean Community, the Organisation of Eastern Caribbean States, the Association of Caribbean States, the United Nations Economic Commission for Latin America and the Caribbean, or any other Caribbean regional organisation or institution;
 - (b) other Caribbean regional affairs relating specifically to issues that are of interest to or affect the Virgin Islands;
 - (c) the relationship between the Virgin Islands and the United States Virgin Islands in matters of mutual interest;
 - (d) tourism and tourism-related matters;
 - (e) taxation and the regulation of finance and financial services; and
 - (f) European Union matters directly affecting the interests of the Virgin Islands.
- (5) The terms and conditions referred to in subsection (4) are the following—
- (a) separate authority shall be required from or on behalf of a Secretary of State for the commencement of formal negotiation and the conclusion of any treaty or other international agreement by the Government of the Virgin Islands, provided that general authority may be granted in specified matters to commence the formal negotiation of, and where it is deemed appropriate, to conclude any such treaty or international agreement;
 - (b) no political declaration, understanding or arrangement in the field of foreign policy shall be signed or supported in the name of the Government of the Virgin Islands without the prior approval of a Secretary of State;
 - (c) a formal invitation to a member of government or Head of State of another country to visit the Virgin Islands shall not be issued without prior consultation with the Governor;
 - (d) the costs of any activities in pursuance of subsection (4) shall be borne by the Government of the Virgin Islands;
 - (e) the Premier or other Minister shall keep the Governor fully informed of any activities in pursuance of subsection (4); and
 - (f) the Premier or other Minister shall provide to the Governor on request all papers and information, including the text of any instrument under negotiation, available to the Premier or other Minister with respect to any activities in pursuance of subsection (4).
- (6) Any matter that is delegated to the Premier or to any other Minister under subsection (4) shall be performed by the Premier or such other Minister in a manner that is in the best interests of the Virgin Islands and not prejudicial to the interests of Her Majesty and, for this purpose, the Governor and the Premier shall from time to time hold conference to ensure the proper safeguard of those interests.
- (7) In the event of any disagreement regarding the exercise of any delegated authority under subsection (4), the matter shall be referred to a Secretary of State whose decision on the matter shall be final and whose directions shall be complied with.
- (8) Where the Governor, acting in his or her discretion, determines that the exercise of any function conferred on any other person or authority (other than the House of Assembly) would involve or affect any matter mentioned in subsection (1), the Governor may, acting after consultation with the Premier, give directions as to the exercise of that function, and the person or authority concerned shall exercise the function in accordance with those directions.

Oaths and affirmations

61. Every member of the Cabinet and the Cabinet Secretary, and every member of the National Security Council (except the Governor), shall, before entering upon the duties of his or her office, make before the Governor an oath or affirmation of allegiance and an oath or affirmation for the due execution of that office in the forms set out in Schedule 1.

CHAPTER 5
THE LEGISLATURE
Composition

Composition of Legislature

62. There shall be a Legislature of the Virgin Islands which shall consist of Her Majesty and a House of Assembly.

House of Assembly

63.—(1) The House of Assembly shall consist of a Speaker elected as provided in section 69, thirteen elected members, and one non-voting *ex officio* member, namely the Attorney General.

(2) A law made under section 71 may alter the number of elected members of the House of Assembly, provided that the number of elected members shall be not less than thirteen; but no such law shall come into force—

- (a) unless, where the law provides for an alteration in the number of electoral districts referred to in section 64(2)(b), a Bill providing for the altered number of electoral districts and their boundaries to take account of the altered number of elected members has been passed following a report by an electoral district boundaries commission; and
- (b) until the dissolution of the House of Assembly next following the enactment of such law.

(3) For its enactment a Bill for a law made in pursuance of subsection (2) shall require the support of two-thirds of the elected members of the House of Assembly.

(4) A law made in pursuance of subsection (2) shall provide for the quorum in the House of Assembly and the Cabinet.

Elected members

64.—(1) The elected members of the House of Assembly shall be persons qualified for election in accordance with this Constitution and, subject to this Constitution, shall be elected in the manner provided by or under any law for the time being in force in the Virgin Islands.

(2) Subject to section 63(2), for the purposes of elections the Virgin Islands—

- (a) shall be a single electoral district and shall return four members to the House of Assembly; and
- (b) shall also be divided into nine electoral districts in such manner as may be provided by or under any law for the time being in force in the Virgin Islands, and each such district shall return one member to the House of Assembly.

Qualifications for elected membership

65.—(1) Subject to this section and section 66, a person shall be qualified to be elected as a member of the House of Assembly if, and shall not be qualified to be so elected unless, he or she—

- (a) was so qualified immediately before the commencement of this Constitution; or
- (b) is a person who—
 - (i) is a Virgin Islander of the age of twenty-one years or upwards; and
 - (ii) is otherwise qualified as a voter under section 68.

(2) Subject to subsections (3) and (4), for the purposes of subsection (1)(b)(i) a “Virgin Islander” is a person who belongs to the Virgin Islands by birth or descent who was—

- (a) born in the Virgin Islands of a father or mother who at the time of the birth was a British overseas territories citizen (or a British Dependent Territories citizen) by virtue of birth in

the Virgin Islands or by virtue of descent from a father or mother who was born in the Virgin Islands;

- (b) born in the Virgin Islands of a father or mother who at the time of the birth belonged to the Virgin Islands by birth or descent; or
- (c) born outside the Virgin Islands of a father or mother who at the time of the birth belonged to the Virgin Islands by birth or descent.

(3) A person born outside the Virgin Islands who belongs to the Virgin Islands by descent shall not be qualified to be elected as a member of the House of Assembly unless one of his or her grandparents belonged to the Virgin Islands by birth.

(4) A person, whether born in or outside the Virgin Islands, who would otherwise be qualified to be elected as an elected member of the House of Assembly by virtue of subsection (1)(b) shall not be so qualified unless—

- (a) where that person has never been domiciled in the Virgin Islands, he or she has resided in the Virgin Islands for at least five years immediately before the date of his or her nomination for election; or
- (b) where that person was formerly domiciled in the Virgin Islands but has lived outside the Virgin Islands for a continuous period of at least ten years (excluding periods related to medical or educational purposes), he or she has resided in the Virgin Islands for at least three years immediately before the date of his or her nomination for election and is domiciled in the Virgin Islands at that date.

Disqualifications for elected membership

66.—(1) No person shall be qualified to be elected as a member of the House of Assembly who—

- (a) holds, or is acting in, any public office;
- (b) has been adjudged or otherwise declared bankrupt under any law in force in any country and has not been discharged;
- (c) is a person certified to be insane or otherwise adjudged to be of unsound mind under any law in force in any country;
- (d) at the date of election, is under sentence of death imposed on him or her by a court of law in any country, or is serving or has at any time within the period of five years immediately preceding that date been serving any part of a sentence of imprisonment (by whatever name called) of at least twelve months imposed on him or her by such a court or substituted by competent authority for some other sentence imposed on him or her by such a court; or is under such a sentence of imprisonment the execution of which has been suspended;
- (e) is disqualified for membership of the House of Assembly by or under any law in force in the Virgin Islands relating to offences connected with elections; or
- (f) 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 or her 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 or her interest, or the interest of such firm or company, in it.

(2) For the purposes of subsection (1)(d)—

- (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 House of Assembly

67.—(1) Every elected member of the House of Assembly shall vacate his or her seat in the House at the next dissolution of the House after his or her election.

(2) Notwithstanding that a member of the House of Assembly has vacated his or her seat by virtue of subsection (1), every such member shall be entitled to continue receiving the benefits and privileges of a member until the polling day for election for a new House of Assembly, provided that such benefits and privileges shall cease if the member fails to win a seat at the general election.

(3) An elected member of the House of Assembly shall also vacate his or her seat in the House—

- (a) if he or she resigns it by writing under his or her hand addressed to the Speaker;
- (b) if he or she is absent from the sittings of the House for such period and in such circumstances as may be prescribed in the Standing Orders of the House;
- (c) if he or she ceases to be qualified for election;
- (d) subject to subsections (4), (5) and (6), if any circumstances arise that, if he or she were not a member of the House, would cause him or her to be disqualified for election as such by virtue of any provision of section 66(1) other than paragraph (f); or
- (e) subject to subsection (7), if he or she 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 or she is a partner, or any company of which he or she is a director or manager, becomes a party to any such contract, or if he or she becomes a partner in a firm, or a director or manager of a company, which is a party to any such contract.

(4) If circumstances such as are referred to in subsection (3)(d) arise because a member is declared bankrupt, adjudged to be of unsound mind, under sentence of death or imprisonment or convicted of an offence relating to elections and if it is open to the member to appeal against the decision (either with the leave of the court or other authority or without such leave) he or she shall forthwith cease to perform his or her functions as a member but, subject to subsection (5), he or she shall not vacate his or her seat in the House until the expiration of a period of thirty days thereafter; but 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 of Assembly.

(5) If, on the determination of any appeal, the circumstances referred to in subsection (4) 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 of appeal or the refusal of appeal or for any other reason, it ceases to be open to the member to appeal, he or she shall forthwith vacate his or her seat.

(6) If at any time before the member vacates his or her seat the circumstances referred to in subsection (4) cease to exist, the seat of that member shall not become vacant on the expiration of the period referred to in subsection (4) and he or she may resume the performance of his or her functions as a member.

(7) If in the circumstances it appears just to the House of Assembly to do so, the House may exempt any elected member from vacating his or her seat under subsection (3)(e) if such member, before becoming a party to such contract as there described, 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), discloses to the House the nature of such contract and his or her interest or the interest of any such firm or company in it.

(8) Any request by an elected member for exemption under subsection (7) shall be made by way of motion, which shall be placed on the Order Paper for a decision of the House of Assembly.

(9) In any case in which the House of Assembly, under subsection (7), decides not to exempt an elected member from vacating his or her seat, the member may appeal to the High Court against

the decision, and subsections (4), (5) and (6) shall apply in the same manner as they do in the circumstances there specified.

Qualifications of voters

68.—(1) Subject to subsection (3), 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 or she belongs to the Virgin Islands and on the qualifying date has attained the age of eighteen years and he or she 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.

(2) Subject to subsection (3), any person who was qualified to be registered as a voter immediately before the commencement of this Constitution shall continue to be so qualified thereafter.

(3) 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;
- (b) is disqualified by or under any such law from being registered as a voter for the purposes of elections by reason of his or her having been convicted of an offence relating to elections; or
- (c) is under sentence of death imposed on him or her by a court or is serving a sentence of imprisonment (by whatever name called) for a term exceeding twelve months imposed on him or her by a court or substituted by competent authority for some other sentence imposed on him or her by a court.

(4) 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.

(5) For the purposes of subsection (3)(c)—

- (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.

Speaker and Deputy Speaker

69.—(1) When the House of Assembly 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 House.

(2) If the office of Speaker falls vacant for any reason other than a dissolution of the House of Assembly, the House shall as soon as practicable elect another person to that office.

(3) The Speaker shall be elected from among the elected members of the House of Assembly or from persons qualified to be elected members of the House, other than Ministers, and no person shall be elected as Speaker if he or she is a person disqualified for election as a member of the House by virtue of any provision of section 66(1) other than paragraph (f).

(4) When the House of Assembly 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 House who is not a member of the Cabinet to be Deputy Speaker of the House.

(5) If the office of Deputy Speaker falls vacant for any reason other than a dissolution of the House of Assembly, the House shall as soon as convenient elect to that office another member of the House who is not a member of the Cabinet.

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

- (a) on dissolution of the House of Assembly;
- (b) if he or she announces the resignation of his or her office to the House of Assembly or if by writing under his or her hand addressed to the House and received by the Clerk of the House he or she resigns that office;
- (c) if a motion on the Order Paper for his or her removal is carried by the votes of a majority of all the elected members of the House; or
- (d) if he or she is appointed to be a member of the Cabinet.

(7) A person shall also vacate the office of Speaker—

- (a) if he or she ceases to be a person qualified for election as a member of the House of Assembly;
- (b) if any circumstances arise that would cause him or her to be disqualified for election as an elected member of the House by virtue of any provision of section 66(1) other than paragraph (f);
- (c) on the expiration of a period of thirty days from the date of his or her election if he or she 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 or she has not disclosed to the House of Assembly the nature of such contract and his or her interest, or the interest of such firm or company, in it and the House has not exempted him or her from vacating his or her office under this paragraph; or
- (d) if any circumstances arise that, if he or she were an elected member of the House of Assembly, would cause him or her to vacate his or her seat under section 67(3)(d).

(8) A person shall also vacate the office of Deputy Speaker if—

- (a) he or she ceases to be a member of the House of Assembly for any reason other than a dissolution of the House; or
- (b) by virtue of section 67(4), he or she is required to cease to perform his or her functions as a member of the House.

Leader of the Opposition

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

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

- (a) a member of the House of Assembly recommended by a majority of the elected members of the House who are members of any opposition party whose numerical strength in the House 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), the member of the House of Assembly who in the judgement of the Governor is best able to command the support of the members of the House in opposition to the Government.

(3) If at any time between the polling in a general election and the next following dissolution of the House of Assembly the Governor is satisfied that, if the office of the Leader of the Opposition were then vacant, he or she would appoint to that office 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 House of Assembly the holder of that office ceases to be a member of the House; or
- (b) if the holder of that office is appointed as a Minister.

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

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

Powers and Procedure

Power to make laws

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

Standing Orders

72. Subject to this Constitution, the House of Assembly 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, entitling and numbering of Bills and the presentation of Bills to the Governor for assent.

Oaths and affirmations

73. No member of the House of Assembly shall be permitted to take part in the proceedings of the House (other than proceedings necessary for the purposes of this section) until he or she has made and subscribed before the House an oath or affirmation of allegiance and an oath or affirmation for the due execution of office as such member in the forms set out in Schedule 1; but the election of the Speaker and Deputy Speaker may take place before the members of the House have made such oaths or affirmations.

Presiding in the House of Assembly

74.—(1) The Speaker or, in his or her absence, the Deputy Speaker or, if they are both absent, a member of the House of Assembly (not being a member of the Cabinet) elected by the House for that sitting shall preside at each sitting of the House.

(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

75.—(1) Subject to this section, section 53(1), section 63(3) and section 69(6)(c), all questions proposed for decision in the House of Assembly shall be determined by a majority of the votes of the members present and voting.

(2) Only the elected members of the House of Assembly shall be entitled to vote—

- (a) in an election of the Speaker or Deputy Speaker;
- (b) on a motion on the Order Paper for the removal from office of the Speaker or Deputy Speaker; or
- (c) on a motion on the Order Paper that the House of Assembly 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 or she shall have and exercise a casting vote; but where the motion before the House of Assembly is one to which subsection (2) applies the person presiding shall not have a casting vote unless he or she is an elected member.

(4) In the event of an equality of votes on any question in respect of subsection (2) the motion shall be lost.

Validity of proceedings

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

Quorum

77.—(1) Subject to section 63(4), a quorum of the House of Assembly shall consist of seven members besides the person presiding at the sitting.

(2) If at any sitting of the House of Assembly 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 House, the person presiding at the sitting ascertains that a quorum of the House is still not present, the House shall be adjourned.

Introduction of Bills, etc

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

(2) Except on the recommendation of the Minister responsible for finance, the House of Assembly shall not

- (a) proceed upon any Bill (including any amendment to a Bill) which, in the opinion of the person presiding in the House, 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 House, is that provision would be made for any of the purposes mentioned in paragraph (a).

Assent to Bills

79.—(1) A Bill passed by the House of Assembly shall become a law when—

- (a) the Governor has assented to it in Her Majesty's name and on Her Majesty's behalf and has signed it in token of such assent; or
- (b) Her Majesty has given Her assent to it 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 the Governor shall declare that he or she assents to it or that he or she reserves the Bill for the signification of Her Majesty's pleasure; but unless the Governor has been authorised by a Secretary of State to assent to it, the Governor shall reserve for the signification of Her Majesty's pleasure any Bill which appears to him or her, acting in his or her 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 power or any international organisation;
- (b) to be likely to prejudice the Royal prerogative; or
- (c) to be in any way repugnant to or inconsistent with this Constitution.

Disallowance of laws

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

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

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

Governor's reserved power

81.—(1) If the Governor considers it urgently necessary, for the purpose of complying with any international obligation applicable to the Virgin Islands, that any Bill introduced, or any motion to which this section applies proposed, in the House of Assembly should have effect, then, if the House fails to pass the Bill or carry the motion within such time and in such form as the Governor thinks fit, and notwithstanding any provisions of this Constitution or any other law or any Standing Orders, the Governor may, subject to subsection (2), declare that such Bill or motion shall have effect as if it had been passed or carried by the House, either in the form in which it was introduced or proposed or with such amendments as the Governor thinks fit which have been moved or proposed in the House or any committee of the House; and such Bill or motion shall be deemed thereupon to have been so passed or carried, and the provisions of this Constitution and, in particular, the provisions relating to assent to Bills and disallowance of laws, shall have effect accordingly.

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

- (a) the question whether the declaration should be made shall first be submitted in writing by the Governor to the Cabinet and if, upon the question being submitted to it, the Cabinet advises the Governor that the declaration should be made, the Governor shall make the declaration;
- (b) if, when the question whether the declaration should be made is submitted to it as aforesaid, the Cabinet does not, within such time as the Governor thinks reasonable and expedient, advise the Governor that the declaration should be made, then the Governor may submit the said question to a Secretary of State and may make the declaration if, upon the question being submitted to him or her, the Secretary of State authorises the Governor to make the declaration.

(3) If any member of the Cabinet so desires, he or she may, within thirty days of the date of the making of a declaration under this section, submit to the Governor a statement in writing of his or her comments on the making of such declaration, and the Governor shall forward such statement, or a copy of it, as soon as practicable to a Secretary of State.

(4) This section applies to any motion—

- (a) relating to or for the purposes of a Bill;
- (b) proposing or amending a resolution which, if passed by the House of Assembly, would have the force of law; or
- (c) proposing or amending a resolution upon which the coming into force or continuance in force of any instrument subsidiary to a Bill depends.

(a) 1978 c. 30.

(5) For the purposes of this section, a Bill shall be validly introduced, and a motion shall be validly proposed, if it is introduced or proposed by any one member of the House of Assembly.

(6) The powers conferred on the Governor by subsections (1) and (2) shall be exercised by the Governor in his or her discretion.

Privileges, immunities and powers of House of Assembly

82. The Legislature may by law determine and regulate the privileges, immunities and powers of the House of Assembly and of its members, but no such privileges, immunities or powers shall exceed those of the Commons House of Parliament of the United Kingdom or of its members.

Miscellaneous

Sessions of House of Assembly

83.—(1) Subject to this section, the sessions of the House of Assembly shall be held at such times and places as the Governor, acting in accordance with the advice of the Premier, may appoint by proclamation published in the *Gazette*.

(2) The first session of the House of Assembly shall commence within a period of two months after the first general election held after the commencement of this Constitution, and thereafter there shall be a session of the House 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.

(3) When the House of Assembly is in session, the Speaker may call meetings of the House from time to time and, if no meeting has been called sooner, shall call a meeting within two months of the previous meeting.

(4) In subsection (3), “meeting” means any sitting or sittings of the House of Assembly commencing when the House first meets after being summoned at any time and terminating when the House is adjourned *sine die* or at the conclusion of a session.

Prorogation and dissolution

84.—(1) The Governor, acting in accordance with the advice of the Premier, may at any time, by proclamation published in the *Gazette*, prorogue the House of Assembly; but the Governor shall prorogue the House at least once in each calendar year except in any year during which the House is dissolved.

(2) The Governor, acting after consultation with the Premier, may at any time, by proclamation published in the *Gazette*, dissolve the House of Assembly.

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

Recalling dissolved House of Assembly in case of emergency

85. If, between a dissolution of the House of Assembly and the next ensuing general election, an emergency arises of such a nature that, in the opinion of the Governor, it is necessary for the House to be recalled, the Governor may, acting after consultation with the Premier, summon the House that has been dissolved, and that House shall thereupon be deemed (except for the purposes of section 86) not to have been dissolved, but shall be deemed (except as aforesaid) to be dissolved on the date on which the next ensuing general election is held.

General elections

86. A general election shall be held at such time within two months, but not earlier than twenty-one days, after every dissolution of the House of Assembly as the Governor shall appoint by proclamation published in the *Gazette*.

Determination of questions as to membership

87.—(1) The High Court shall have jurisdiction to hear and determine an appeal under section 67(9) and any question whether—

- (a) any person has been validly elected as a member of the House of Assembly; or
- (b) any elected member of the House of Assembly has vacated his or her seat in the House or is required by virtue of section 67(4) to cease to perform his or her functions as a member.

(2) An application to the High Court for the determination of any question under subsection (1)(a) may be made by—

- (a) any person entitled to vote in the electoral district and at the election to which the application relates;
- (b) any person who was a candidate in that district at that election; or
- (c) the Attorney General.

(3) An application to the High Court for the determination of any question under subsection (1)(b) may be made by—

- (a) any person entitled to vote at an election in the electoral district for which the member concerned was returned;
- (b) any elected member of the House of Assembly; or
- (c) the Attorney General.

(4) If an application is made under subsection (2) or (3) by a person other than the Attorney General, the Attorney General may intervene and may then appear or be represented in the proceedings.

(5) 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.

(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).

(7) No appeal shall lie from any decision of the Court of Appeal in exercise of the jurisdiction conferred by subsection (6), 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).

(8) In the exercise of the powers conferred on him or her by this section, the Attorney General shall not be subject to the direction or control of any other person or authority.

Penalty for unauthorised sitting or voting

88.—(1) Any person who sits or votes in the House of Assembly knowing or having reasonable grounds for knowing that he or she is not entitled to do so shall be liable to a penalty not exceeding five hundred dollars for every day on which he or she so sits or votes, or such other penalty as may be prescribed by law.

(2) The said penalty shall be recoverable by action in the High Court at the suit of the Director of Public Prosecutions.

CHAPTER 6
THE JUDICATURE

Eastern Caribbean Supreme Court

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

Subordinate courts and tribunals

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

CHAPTER 7
THE PUBLIC SERVICE
Public Service - General

Public Service Commission

91.—(1) There shall be in and for the Virgin Islands a Public Service Commission which shall consist of five members, of whom—

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

but the Governor shall, as far as practicable, appoint as one member of the Commission a person who is ordinarily resident in an island of the Virgin Islands other than Tortola.

(2) The Governor, acting after consultation with the Premier, shall appoint one of the five 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 or she is a member of, or a candidate for election to, the House of Assembly, 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 five years from the date of his or her appointment or such earlier time as may be specified in the instrument by which he or she was appointed;
- (b) if he or she resigns office by writing under his or her hand addressed to the Governor;
- (c) if he or she becomes a member of, or a candidate for election to, the House of Assembly or is appointed to or to act in any public office; or
- (d) if the Governor, acting in his or her discretion, directs that he or she shall be removed from office for inability to discharge the functions of that office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour.

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

(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 or her office, the Governor, acting in the manner prescribed by subsection (1) 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 subsection (4), continue so to act until he or she is notified by the Governor, acting in his or her discretion, that the circumstances giving rise to the appointment have ceased to exist; but in the case of a vacancy in the office of the Chairman or the inability of the holder of that office to perform his or her 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 Premier, may designate.

(6) No business shall be transacted at any meeting of the Public Service Commission if there are less than four members of the Commission present.

(7) Any question proposed for decision at any meeting of the Public Service Commission shall be determined by a majority of the votes of the members present and voting; and if on any question the votes are equally divided the Chairman shall have and exercise a casting vote.

(8) The Public Service Commission shall be served by a secretariat, the members of which shall be public officers.

(9) Subject to this Constitution, in the exercise of its functions the Public Service Commission shall not be subject to the direction or control of any other person or authority.

Power to appoint, etc, to public office

92.—(1) Subject to this section and to the other provisions of this Constitution, 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 in accordance with the advice of the Public Service Commission; but the Governor, acting in his or her discretion, may act otherwise than in accordance with that advice if he or she determines that compliance with that advice would prejudice Her Majesty's service.

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

(3) If the Public Service Commission, having reconsidered its original advice under subsection (2), substitutes for it different advice, subsection (2) shall apply to that different advice as it applies to the original advice.

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

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

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

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

(8) 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 the Governor to make appointments to

public offices and to remove or exercise disciplinary control over persons holding or acting in such offices; and except in so far as regulations made under this subsection otherwise provide, any power delegated by such regulations may be exercised by any person to whom it is delegated without reference to the Public Service Commission.

(9) The Premier may from time to time request a report from the Public Service Commission about the functioning of the public service.

(10) This section does not apply to—

- (a) any office to which section 95 applies; or
- (b) any office in the Police Force.

Teaching Service Commission

93.—(1) There shall be in and for the Virgin Islands a Teaching Service Commission which shall consist of three members, of whom—

- (a) one shall be appointed by the Governor, acting in his or her discretion;
- (b) one shall be appointed by the Governor, acting in accordance with the advice of the Cabinet; and
- (c) one shall be appointed by the Governor, acting after consultation with the British Virgin Islands Teachers Union.

(2) The provisions of section 91(2) to (9) 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; but for that purpose the reference in section 91(6) to “four members” shall have effect as if it were a reference to “two members”.

(3) The provisions of section 92(1), (2), (3) and (8) 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.

Judicial and Legal Services Commission

94.—(1) There shall be in and for the Virgin Islands a Judicial and Legal Services Commission which shall consist of—

- (a) the Chief Justice, who shall be Chairman;
- (b) one judge of the Court of Appeal or the High Court nominated by the Chief Justice after consultation with the Governor and the Virgin Islands General Legal Council;
- (c) the Chairman of the Public Service Commission; and
- (d) two other members appointed by the Governor, acting in accordance with the advice of the Premier and the Leader of the Opposition who will each nominate one member, at least one of whom shall be a legal practitioner.

(2) For the purpose of subsection (1)(d), the Premier and the Leader of the Opposition shall alternate in nominating a legal practitioner, with the Premier making the first such nomination upon the commencement of this Constitution, provided that such nomination shall not be construed as precluding the nomination of two legal practitioners under subsection (1)(d).

(3) No person shall be qualified to be appointed under subsection (1)(d) if he or she is a member of, or a candidate for election to, the House of Assembly or holds or is acting in any public office.

(4) The office of a member of the Judicial and Legal Services Commission appointed under subsection (1)(d) shall become vacant—

- (a) at the expiration of five years from the date of his or her appointment or such earlier time as may be specified in the instrument by which he or she was appointed;
- (b) if he or she resigns office by writing under his or her hand addressed to the Governor;

- (c) if he or she becomes a member of, or a candidate for election to, the House of Assembly, or is appointed to or to act in any public office; or
- (d) if the Governor, acting in his or her discretion, directs that he or she shall be removed from office for inability to discharge the functions of that office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour.

(5) If the office of a member of the Judicial and Legal Services Commission appointed under subsection (1)(d) becomes vacant or if such a member is for any reason unable to perform the functions of that office, the Governor, acting in accordance with the advice of the Premier or the Leader of the Opposition, as the case may be, may appoint another suitably qualified person to that office for the unexpired term of the previous holder of the office or until the holder of the office is able to resume his or her functions.

(6) Any decision of the Judicial and Legal Services Commission shall require the concurrence of not less than three members of the Commission, and the Commission shall take its decisions in such form and manner as it may determine.

(7) In the exercise of its functions, the Judicial and Legal Services Commission—

- (a) shall not be subject to the direction or control of any other person or authority; and
- (b) may regulate its own procedure.

Power to appoint, etc, to legal offices

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

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

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

(4) This section applies to the offices of—

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

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

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

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

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

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

(9) A person holding the office of Attorney General, Director of Public Prosecutions or Magistrate may only be removed from office for inability to discharge the functions of his or her office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour.

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

Police Service Commission

96.—(1) There shall be in and for the Virgin Islands a Police Service Commission which shall consist of five members, of whom—

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

(2) The provisions of section 91(2) to (9) shall apply in relation to the Police 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.

Power to appoint, etc, to offices in the Police Force

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

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

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

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

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

Legislation regarding Commissions

98.—(1) The Legislature may by law make provision for—

- (a) the organisation of the work of a Commission and the manner in which it performs its functions;
- (b) consultation by a Commission with persons or authorities other than its members;
- (c) the protection and privileges of members of a Commission in respect of the performance of their functions and the privilege of communications to and from a Commission and its members in the case of legal proceedings;
- (d) the definition and trial of offences in relation to the functions of a Commission and the imposition of penalties for such offences; and
- (e) conferring on a Commission other related functions, without prejudice to the functions conferred on such Commission by this Constitution.

(2) In this section “Commission” means the Public Service Commission, the Teaching Service Commission, the Judicial and Legal Services Commission or the Police Service Commission.

Pensions

Applicability of pension law

99.—(1) Subject to section 101, the law applicable to the grant and payment to any officer, or to his or her widow or widower, children, dependants or personal representatives, of any pension, gratuity or other like allowance (in this section and sections 100 and 101 referred to as an “award”) in respect of the service of that officer in the public service 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 or she 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 or she opts shall be taken to be more favourable to him or her than any other law for which he or she might have opted.

(4) In this section “the appointed day” means the date of commencement of this Constitution.

Pensions, etc, charged on Consolidated Fund or Pension Fund

100. 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 or the Pension Fund of the Virgin Islands.

Grant and withholding of pensions, etc

101.—(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 respect contained in any such law, to withhold, reduce in amount or suspend any award payable under any such law is hereby vested in the Governor, acting in his or her discretion.

(2) In this section “pensions law” means any law relating to the grant to any person, or to the widow or widower, 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.

CHAPTER 8

FINANCE

Consolidated Fund

102. All revenues or other moneys raised or received by or for the purposes of the Government of the Virgin Islands (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.

Withdrawal of money from Consolidated Fund or other public funds

103.—(1) No money shall be withdrawn from the Consolidated Fund except on the authority of a warrant under the hand of the Minister charged with responsibility for finance (in this Chapter referred to as “the Minister”); but where, in the opinion of the Governor, acting in his or her discretion, moneys are required to enable the Governor to discharge his or her responsibilities under section 60, such moneys may be withdrawn from the Consolidated Fund either—

- (a) on the authority of a warrant under the hand of the Minister; or
- (b) on the authority of a warrant under the hand of the Governor, acting in his or her 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 Act; or
 - (ii) by a supplementary estimate approved by resolution of the House of Assembly;
- (b) the expenditure has been authorised in accordance with section 105; or
- (c) it is expenditure (in this Chapter referred to as “statutory expenditure”) that is charged on the Consolidated Fund by this Constitution or any other law.

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

Authorisation of expenditure

104.—(1) The Minister shall cause to be prepared and laid before the House of Assembly as soon as practicable before the beginning of each financial year estimates of the revenues and expenditure of the Virgin Islands for that year; but if the House is dissolved less than three months before the beginning of any financial year, the estimates for that year may be laid before the House as soon as practicable after the beginning 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 House of Assembly 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 in it.

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

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

a supplementary estimate, showing the sums required or spent, shall be laid before the House of Assembly.

(4) Where in respect of any financial year any supplementary estimates have been laid before the House of Assembly in accordance with subsection (3) and approved by resolution of the House, a Supplementary Appropriation Bill shall, as soon as practicable after the end of that year, be introduced into the House 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 on the authority of a warrant issued by the Governor by virtue of section 103(1)(b), 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 House of Assembly.

Authorisation of expenditure in advance of appropriation

105. If the Appropriation Act in respect of any financial year has not come into force by the beginning of that financial year, the House of Assembly may by resolution 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 of the Virgin Islands until the expiration of four months from the beginning of that financial year or the coming into force of the Appropriation Act, whichever is the earlier.

Contingencies Fund

106.—(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 or she is satisfied that there is an urgent and unforeseen need for expenditure for which no other provision exists.

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

Public debt

107.—(1) All debt charges for which the Virgin Islands are liable shall be a charge on the Consolidated Fund or the Debt Service 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

108.—(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 any law enacted by the Legislature.

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

(3) The remuneration prescribed in pursuance of this section in respect of the holder of any such office and his or her other terms of service (other than allowances that are not taken into account

in computing, under any law in that respect, any pension payable in respect of his or her service in that office) shall not without the consent of that person be altered to his or her disadvantage after his or her appointment.

(4) Where a person's remuneration or other terms of service depend upon his or her option, the remuneration or terms for which he or she opts shall, for the purpose of subsection (3), be deemed to be more advantageous to that person than any others for which he or she might have opted.

(5) This section applies to the offices of Deputy Governor, Chairman or other member of the Public Service Commission, the Teaching Service Commission, the Judicial and Legal Services Commission and the Police Service Commission, Attorney General, Director of Public Prosecutions, Magistrate, Auditor General, Complaints Commissioner and Registrar of Interests.

The Auditor General

109.—(1) There shall be an Auditor General whose office shall be a public office.

(2) The accounts of the House of Assembly and all Government departments and offices (including the Public Service Commission, the Teaching Service Commission, the Police Service Commission and such other body as may be designated by law) shall be audited and reported on annually by the Auditor General, and for that purpose the Auditor General or any person authorised by him or her shall have access to all books, records, returns and other documents relating to such accounts.

(3) The Auditor General shall submit his or her reports made under subsection (2) to the Minister who shall, within three months of the receipt of the reports, cause them to be laid before the House of Assembly.

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

CHAPTER 9

THE COMPLAINTS COMMISSIONER AND REGISTER OF INTERESTS

The Complaints Commissioner

110.—(1) There shall be a Complaints Commissioner for the Virgin Islands.

(2) The Complaints Commissioner shall be appointed by the Governor, acting after consultation with the Premier and the Leader of the Opposition, by instrument under the public seal.

(3) No person shall be qualified to be appointed as Complaints Commissioner if he or she is or has been within the preceding three years—

- (a) an elected member of the House of Assembly; or
- (b) the holder of any office in any political party.

(4) The office of the Complaints Commissioner shall become vacant—

- (a) at the expiration of the period specified in the instrument by which he or she was appointed;
- (b) if he or she resigns office by writing under his or her hand addressed to the Governor;
- (c) if he or she becomes an elected member of the House of Assembly or the holder of any office in any political party; or
- (d) if the Governor, acting in his or her discretion, directs that he or she shall be removed from office for inability to discharge the functions of the office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour, or for contravention of subsection (5).

(5) Subject to such exceptions as the Governor, acting in his or her discretion, may authorise by directions in writing, the Complaints Commissioner 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 or her office.

Functions of Complaints Commissioner

111.—(1) The Complaints Commissioner shall have such functions and jurisdiction as may be prescribed by law.

(2) In the exercise of his or her functions, the Complaints Commissioner shall not be subject to the direction or control of any other person or authority.

Registration of interests

112.—(1) There shall be for the Virgin Islands a Register of Interests, which shall be maintained by a Registrar who shall be appointed, and may be removed from office, by the Governor acting in his or her discretion.

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

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

(4) This section applies to all members of the House of Assembly (including Ministers) and the holders of such other offices (except that of Governor) as may be prescribed by law.

(5) A law made under this Constitution shall make provision for giving effect to this section, including the sanctions which may be imposed for a failure to comply with, or the making of false statements in purported compliance with, subsections (2) and (3) and, notwithstanding anything contained in Chapter 5, the sanctions which may be imposed may include the suspension of a member of the House of Assembly from sitting and voting in the House for such period as may be prescribed in such a law.

CHAPTER 10

TRANSITIONAL AND MISCELLANEOUS

Meaning of the appointed day

113. In this Chapter, “the appointed day” means the day referred to in section 1(2) of this Order, that is to say the date of commencement of this Constitution.

Revocations

114. The instruments specified in Schedule 2 are revoked with effect from the appointed day.

Existing laws

115.—(1) Subject to this section, the existing laws shall have effect on and after the appointed day as if they had been made in pursuance of or in consistency with this Constitution and shall be construed with such adaptations and modifications as may be necessary to bring them into conformity with this Constitution.

(2) The Legislature may by law make such amendments to any existing law as appear to it to be necessary or expedient for bringing that law into conformity with this Constitution or otherwise for giving effect to this Constitution; and any existing law shall have effect accordingly from such day, not being earlier than the appointed day, as may be specified in the law made by the Legislature.

(3) In this section “existing laws” means laws and instruments (other than Acts of the Parliament of the United Kingdom and instruments made under them) having effect as part of the law of the Virgin Islands immediately before the appointed day.

Existing offices and officers

116.—(1) Any office established by or under the Virgin Islands (Constitution) Order 1976(a) and existing immediately before the appointed day shall on and after that day, so far as consistent with this Constitution, continue as if it had been established by or under this Constitution.

(2) Any person who immediately before the appointed day holds or is acting in any office continued by virtue of subsection (1) shall, on and after that day, continue to hold or act in that office as if he or she had been appointed to hold or act in it in accordance with or under this Constitution.

(3) Any person to whom subsection (2) applies who, before the appointed day, has made any oath or affirmation required to be made before assuming the functions of his or her office shall be deemed to have made any like oath or affirmation so required by this Constitution or any other law.

(4) The person who, immediately before the appointed day, holds the office of Chief Minister shall, on and after that day, perform the functions of the office of Premier in accordance with this Constitution; and (in accordance with section 1(3) (a) until the day after the polling in the first general election after the appointed day that office shall continue to be called Chief Minister.

Standing Orders

117. The Standing Orders of the Legislative Council established by the Virgin Islands (Constitution) Order 1976 as those Standing Orders are in force immediately before the appointed day shall, except as may be provided under section 72, have effect on and after that day as if they had been made under that section as Standing Orders of the House of Assembly established by this Constitution, but they shall be construed with such adaptations and modifications as may be necessary to bring them into conformity with this Constitution.

Elections

118. A general election shall be held at such time within three months, but not earlier than twenty-one days, of the appointed day as the Governor shall appoint by proclamation published in the *Gazette*.

Power reserved to Her Majesty

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

Meriel McCullagh
Deputy Clerk of the Privy Council

(a) S.I. 1976/2145, amended by S.I. 1979/1603, 1982/151, 1991/2871, 1994/1638, 2000/1343.

SCHEDULE 1 Sections 35(4), 37(2), 61 and 73

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 and the people of the Virgin Islands 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 and the people of the Virgin Islands in the office of [here insert the description of the office].

SCHEDULE 2 Section 114

REVOCATIONS

- The Virgin Islands (Emergency Powers) Order 1967 (S.I. 1967/472)
- The Virgin Islands (Constitution) Order 1976 (S.I. 1976/2145)
- The Virgin Islands (Constitution) (Amendment) Order 1979 (S.I. 1979/1603)
- The Virgin Islands (Constitution) (Amendment) Order 1982 (S.I. 1982/151)
- The Virgin Islands (Constitution) (Amendment) Order 1991 (S.I. 1991/2871)
- The Virgin Islands (Constitution) (Amendment) Order 1994 (S.I. 1994/1638)
- The Virgin Islands (Constitution) (Amendment) Order 2000 (S.I. 2000/1343)

EXPLANATORY NOTE

(This note is not part of the Order)

This Order establishes a new Constitution for the Virgin Islands, to replace the Constitution of 1976. The new Constitution includes, for the first time, a chapter setting out the fundamental rights and freedoms of the individual and provisions for their enforcement. It provides for a Governor as Her Majesty's representatives in the Islands, and for a Premier and Ministers who form a Cabinet together with the Attorney General. It provides for an elected House of Assembly, which together with Her Majesty forms the Legislature. The Eastern Caribbean Supreme Court continues to have jurisdiction in the Islands. Provision is made for a Public Service Commission, a Teaching Service Commission, a Judicial and Legal Services Commission, and a Police Service Commission to provide advice on appointments to offices in these services. A new National Security Council is established, as is the office of Director of Public Prosecutions. Provision is also made for public finance, a Complaints Commissioner, and a Register of Interests.