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THE HOUSE OF ASSEMBLY OF THE VIRGIN ISLANDS

RESOLUTION NO. 3 OF 2016

[Gazetted 19th May, 2016]

WHEREAS it is provided under Standing Order 72 (1) (f) that there shall be a Standing Select Committee known as the Register of Interests Committee;

WHEREAS it is also provided under Standing Order 72 (2) that such Standing Select Committees shall be nominated by the Speaker as soon as may be practicable after the beginning of each House of Assembly;

WHEREAS it is further provided under Standing Order 72 (3) that a Standing Select Committee shall consist of not more than seven (7) and not less than five (5) Members, inclusive of the Member who is Chairman;

NOW THEREFORE BE IT RESOLVED by the House of Assembly of the Virgin Islands that there is established a Standing Select Committee to be known as the Register of Interests Standing Select Committee which shall carry out and exercise all the functions of the Committee under the Register of Interests Act, 2006 (No. 5 of 2006);

AND BE IT FURTHER RESOLVED by the House of Assembly of the Virgin Islands that the following shall be members of the Register of Interests Standing Select Committee and perform the functions aforesaid:

Hon. Mark Vanterpool (Chairman)
Hon. Archibald Christian
Hon. Marlon Penn
Hon. Alvera Maduro-Caines
Hon. Julian Fraser
Hon. Andrew Fahie

PASSED by the House of Assembly this 25th day of April, 2016.

(Sgd) Ingrid Moses-Scatliffe,
Speaker.

(Sgd) Phyllis Evans,
Clerk of the House of Assembly.

THE HOUSE OF ASSEMBLY OF THE VIRGIN ISLANDS

RESOLUTION NO. 12 OF 2019

[Gazetted 12th September, 2019]

WHEREAS it is provided under Standing Order 72 (1)(f) that there shall be a Standing Select Committee known as the Register of Interests Committee;

WHEREAS it is also provided under Standing Order 72 (2) that such Standing Select Committees shall be nominated by the Speaker as soon as may be practicable after the beginning of each House of Assembly;

WHEREAS it is further provided under Standing Order 72 (3) that a Standing Select Committee shall consist of not more than seven (7) and not less than five (5) Members, inclusive of the Member who is Chairman;

WHEREAS it is provided in Standing Order 77A (2) that the Chairman of the Committee shall be a Minister;

AND WHEREAS the functions of the Committee are to consider all matters relating to the Register of Interests as established under section 112 of the Virgin Islands Constitution Order, 2007 and in so doing shall carry out and exercise all the functions of the Committee under the Register of Interests Act, 2006 (No. 5 of 2006);

NOW THEREFORE BE IT RESOLVED by the House of Assembly of the Virgin Islands that the following shall be members of the Register of Interests Committee and perform the functions aforesaid:

Hon. Andrew A. Fahie (Chairman)
Hon. Shereen D. Flax-Charles
Hon. Neville A. Smith
Hon. Kye M. Rymer
Hon. Marlon A. Penn

Passed by the House of Assembly this 2nd day of September, 2019.

(Sgd.) Julian Willock,
Speaker.

(Sgd.) Phyllis Evans,
Clerk of the House of Assembly.



CONFIDENTIAL

MEMORANDUM

REF: GOV/CED/R01/05
TO: Registrar of Interests
FROM: Ag. Executive Private Secretary to the Governor
DATE: 20th December, 2020
SUBJECT: Status Report of the House of Assembly

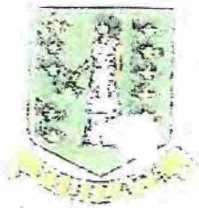
E-MAILED
23 Dec 20

I have been directed by His Excellency the Governor to acknowledge receipt and thank you for your memo of 15th December, 2020, attaching a status report on Members of the House of Assembly.

Please note that further correspondence on this matter will be submitted to you in due course.

[Redacted Signature]

Nolma Chalwell
Ag. Executive Private Secretary to the Governor



Office of the Registrar of Interests
Government of the Virgin Islands

15 December 2020

FROM: Registrar of Interests

TO: His Excellency, the Governor

DATE: 15th December, 2020

SUBJ: Status Report on Members of the House of Assembly

CONFIDENTIAL



Arising out of a request by Your Excellency in early November during my [REDACTED] Leave and our mutual concern for the lack of compliance by Members of the House of Assembly in relation to the requirements of the Register of Interest Act, 2006, I now forward for your information and consideration the Status Report on Members of the House of Assembly.

By way of information, I am to inform you of my resumption of duties on 1st December, 2020. All is not well, but forging on in faith.

I await your comments of the Report at your convenience.

[REDACTED]

Registrar of Interests

/vrv

enc

Telephone: (284) 468-4301 ext. [REDACTED]. Cellular [REDACTED]

CONFIDENTIAL

CONFIDENTIAL

STATUS REPORT ON THE MEMBERS OF THE HOUSE OF ASSEMBLY NON-COMPLIANCE WITH THE
REQUIREMENTS OF SETION 3 OF THE REGISTER OF INTERESTS ACT, 2006

The Register of Interests Act, 2006 is the statute which gives effect to section 112 of the Virgin Islands (Constitution) Order, 2007. Essentially, A Register of Interests shall be maintained by a Registrar. The Register shall contain such interests, assets, income and liabilities of Members of the House of Assembly or any other person connected with him or her, as may be prescribed by law. That said, Members of the House are required, under Section 3 of the Register of Interests Act, 2006, to provide the necessary information in a Declaration, Schedule 1, to the Registrar of Interests at such times as are set out in Section 3 of the Act, which states as follows:

“ (1) A Member shall make a declaration in the form set out in Schedule 1 within thirty days after this Act comes into force , and thereafter

(a) on the date on which he assumes the functions of his office, and

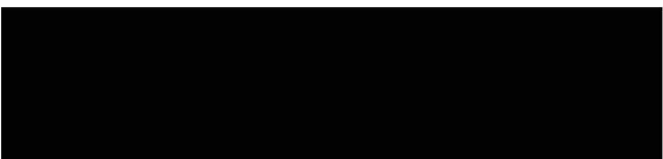
(b) on each subsequent anniversary of that date.

(2) A declaration under this section

(a) shall be made in respect of interests held on the date on which the duty to make the declaration arose; and

(b) shall, where required by the registration form, include a declaration in respect of interests held on that date by a child or spouse of the Member.”

For the period following the General Election held on 25th February, 2019, declarations for the Members of the House of Assembly fell due on 12th March, 2019, the date on which all elected Members, save the Member for the 4th District, took office. Later on 16th July, 2019 the Member for the 4th District took office. Although the 4th District Representative did not file his declaration on 16th July, 2019, he later, on 3rd September, 2019 submitted his declaration to the Registrar of Interests.



Registrar of Interests

15th December, 2020.

The following Table shows the status of all Members of the House of assembly including the Speaker & the Attorney General, Mr. Baba Aziz as of the date of this Report. As at the time of writing Mr. Baba Aziz's term as Attorney General ended. Miss Dawn Smith who succeeded Mr. Aziz took office as a Member of the House of Assembly on 1st October, 2020. Due to the Registrar's [REDACTED] and absence from Office for a protracted period, Miss Smith's declaration is still due.

| | | |
|-------------------------------|--------------------------|---|
| The Hon. Andrew A. Fahie | 1 st District | Delinquent for 2018, 2019 & 2020 |
| The Hon. Melvin M. Turnbull | 2 nd District | Current |
| The Hon. Julian Fraser | 3 rd District | Delinquent for 2018, 2019 & 2020 |
| The Hon. Mark Vanterpool | 4 th District | Delinquent for 2011-2018 |
| The Hon. Kye Rymer | 5 th District | Delinquent for 2020 |
| The Hon. Alvera Maduro Caines | 6 th District | Current |
| Dr. the Hon. Natalio Wheatley | 7 th District | Current |
| The Hon. Marlon Penn | 8 th District | Delinquent for 2017, 2018, 2019 & 2020. |
| The Hon. Vincent Wheatley | 9 th District | Delinquent for 2020 |
| The Hon. Carvin Malone | Territorial Dist. | Delinquent for 2020 |
| The Hon. Neville Smith | Territorial Dist. | Current |
| The Hon. Sheren Flax-Charles | Territorial Dist. | Current |
| The Hon. Shari deCastro | Territorial Dist. | Current |
| The Hon. Julian Willock | Speaker | Current |
| The Hon. Baba Aziz | Attorney General | Current |

In support of this report, copies of correspondence of the most offending Members are attached for information. The Hon. Andrew A. Fahie, The Hon. Julian Fraser & The Hon. Marlon Penn.

The Hon. Mark Vanterpool did not file a single declaration for the period 2011 through 2018.

IN THE MATTER OF THE TERRITORY OF THE VIRGIN ISLANDS COMMISSION OF INQUIRY
2021

AND THE COMMISSION OF INQUIRY ACT (CAP 237)

SUBMISSIONS ON BEHALF OF THE ATTORNEY
GENERAL ON SECTION 13 OF THE REGISTER OF
INTERESTS ACT

1. Section 13 of the Register of Interests Act 2006 (as amended) ('the Act') provides,

13. (1) The Registrar and any person appointed or designated to assist the Registrar in the performance of his duties under this Act

(a) shall, before assuming office, subscribe to the oath of confidentiality referred to in Schedule 3;

(b) shall not, save in accordance with the provisions of this Act or otherwise in relation to any court order or a written request from a Commissioner of Inquiry, disclose information

(i) relating to any declaration or matter in the Register;

or

(ii) that he has acquired in the course of or in relation to his duties or in the exercise of any powers or performance of duties under this Act.

(1a) Where a request for information is made to the Registrar pursuant to subsection 1(b), the Registrar may provide information that in his opinion is strictly necessary to fulfil the request and upon such conditions as to the preservation of confidentiality after the purpose for same has been exhausted as he shall deem appropriate.

(2) The oath of confidentiality referred to in subsection (1)(a) shall be taken before a Magistrate or the Registrar of the High Court.

(see Constitution and Legislation Bundle Volume 1, [68] and [82])

2. Schedule 3 provides,

SCHEDULE 3

[Section 13(1)]

OATH OF CONFIDENTIALITY

FORM OF OATH

I, being the Registrar of Interests/a person appointed/designated to assist the Registrar of Interests in the performance of his duties under the Register of Interests Act, 2006, solemnly swear/affirm that I shall keep confidential all declarations and other information in connection with or relative to Members of the Legislative Council and the Register of Interests which has come to my knowledge in my capacity as Registrar of Interests/a person appointed/designated to assist the Registrar of Interests or in relation to such office that I hold and I shall not disclose such declaration or other information except as authorized by and in accordance with law.

So help me God (omit if affirming)

(see Constitution and Legislation Bundle Volume 1, [75])

3. The very broad duty of confidentiality imposed by the above provisions plainly extends beyond an obligation not to disclose information relating to a declaration or matter in the Register. Section 13(1)(b)(ii) of the Act obliges the Registrar to keep secret “information” that she has acquired *in the course of or in relation to* her duties or the exercise of any powers or performance of duties under the Act.

4. The information supplied by a letter dated 15 December 2020 to the former Governor, and apparently at his request, consisted of a table (described as a “status report”) setting out the extent to which each serving member of the House of Assembly was compliant with the Act and, if non-compliant, the years for which that was so.

5. Furthermore, as she wrote to the former Governor, in respect of the “most non-compliant” of those members, she included copies of the correspondence sent to them in connection with their duties under the Act.

6. The Registrar is independent. She possesses neither an obligation nor a power to divulge any information she has acquired in the course of her duties to any person save as permitted under the Act. Other than the relevant Committee of the House, the only permitted exceptions are,

9. (1) The Register shall not be open for inspection except
(a) for the purposes of a criminal investigation;
(b) on an order of a court in any legal proceedings;
(ba) on the written request of a Commissioner of Inquiry; or
(c) on the written request of a Member in the form prescribed in Schedule 2 upon the payment of the prescribed fee.
(see Constitution and Legislation Bundle Volume 1, [66] and [81])

7. The Governor does not, therefore, for this purpose occupy any special position under the Act and no exception to her statutory duty of confidentiality is made in respect of him. The information disclosed at his request consisted of facts and matters that related to declarations or matters in the Register. The table disclosed who had made such declarations and who had not, and for which years. The correspondence sent to the members also *related* to their declarations.

8. Even if that were not the case, the information disclosed was manifestly acquired *in the course of or in relation to* her duties under the Act.

9. The Registrar's statutory duty of confidentiality is supported by the oath, the material words of which are as follows,

I shall keep confidential all declarations and other information in connection with or relative to Members of the Legislative Council and the Register of Interests which has come to my knowledge in my capacity as Registrar of Interests

10. There can be no doubt that the information she disclosed, "arising out of a request by Your Excellency in early November", was information in connection with Members of the House of Assembly and the Register of Interests which had come to her knowledge in her capacity as Registrar.

11. Therefore, the disclosure was a clear breach of both her statutory duty and of her oath: the former Governor's request amounted to an invitation to the Registrar to breach both and to commit a criminal offence under section 13(3) of the Act (see Constitution and Legislation Bundle Volume 1, [69]).

12. No doubt that request of the former Governor placed the Registrar in an invidious position. Indeed, it is submitted that the officially encouraged practice of the Registrar in communicating confidential information about her duties to successive Governors illuminates a misunderstanding of the nature of her role, which is to be independent of *all* other institutions of Government, including the Governor. The former Governor's actions, in particular, undermined the independence of the Registrar and the rule of law in the Virgin Islands.

13. The only correct course for the former Governor to have taken was to have advised her not to breach her oath of office but, if she had concerns, to seek expeditious advice as to the legal remedies open to her under the Act.

14. Had the Registrar attempted to submit a report concerning a member's non-compliance pursuant to section 7(a) of the Act (see Constitution and Legislation Bundle Volume 1, [65]), and had a Committee not met to consider her report within 21 days of its submission, it was open to the Registrar to seek an order of the High Court to enforce those statutory obligations and that the House should convene the Committee and consider the report forthwith.

15. That would have far more effectually vindicated the independence of her role, the obligations she was to invigilate, and quite probably administered the shock necessary to evoke a wider compliance with the Act.

16. It is precisely in the development of such genuinely and fearlessly independent local institutions that the good governance of the Virgin Islands significantly depends. The practice of encouraging the Registrar to resort in secret to the Governor to apply ineffectual political pressure, thus compromising her independence and the observance of both her statutory duty and her oath of office, let alone contrary to both secretly requesting her to provide confidential information, was fundamentally opposite to that which good governance required.

The Rt. Hon. Sir Geoffrey Cox QC
Edward Risso-Gill
(Counsel for the Attorney General)

Withers BVI
29 October 2021

IN THE MATTER OF THE TERRITORY OF THE VIRGIN ISLANDS COMMISSION OF INQUIRY 2021

AND THE COMMISSION OF INQUIRY ACT (CAP 237) ("the Act")

Response of the Elected Government to the Position Statement on Governance of His Excellency Governor John Rankin CMG

1. The Ministers do not discern any fundamental cause to disagree with the Governor in his general description, *so far as it goes*, of the characteristics of good governance set out at paragraphs 3 to 19 of his Position Statement, save that his summary omits or fails to accord sufficient prominence to one of the most fundamental features of good governance of all, which is democracy.
2. Most accepted definitions of good governance stress the centrality of democratic participation in their government by the governed, and of accountability to the electorate of those responsible for governing.
3. The right to free elections, to vote, stand in those elections and participate fully in the government of the territory of which one is a resident citizen is, in the United Kingdom, protected by Article 3 Protocol 1 of the European Convention on Human Rights and Freedoms, which guarantees "effective political democracy" (*see Sevinger and Eman v The Netherlands (2008) 46 E.H.R.R. SE14 at [14], [16] & [18]* [**Annex 8: Sevinger and Eman v Netherlands (2008) 46 EHRR SE14**] and *PY v France (2006) 42 E.H.R.R. 26 at [41] and [55]* [**Annex 5: Py v France (2006) 42 EHRR 26**]). The UK is under a similar international law duty to protect the right of Virgin Islanders to participate fully in the conduct of public affairs in the Virgin Islands either directly or through their chosen representatives by virtue of Article 25 of the International Covenant on Civil and Political Rights [**Annex 2: International Covenant on Civil and Political Rights**].
4. In this respect, therefore, the Ministers agree with the Governor that essential aspects of good governance is, "*being able to see and hold people accountable for decisions taken*" (¶36) and, "*Accountable government subject to scrutiny in the legislature.*" (¶9)
5. Under a Westminster model constitution, that is achieved by free and fair elections to a legislature to which those responsible for exercising executive authority are fully accountable and on whose confidence their authority depends.
6. In the Virgin Islands, as in the Overseas Territories generally, the Governor who is neither elected by those over whom he exercises executive authority nor accountable to them or to their elected legislature in any way, exercises very substantial executive power.
7. Section 60 of the Constitution of the Virgin Islands [**Annex 7: The Virgin Islands Constitution Order 2007**] provides,

"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;”

8. Further, by s.60 (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.”

9. A major part of the Government of the Virgin Islands, therefore, is exercised by the Governor (on instructions of the UK Government or otherwise) without democratic participation by Virgin Islanders over whom his authority is exercised and without accountability to the Virgin Islands legislature. The Governor may also override the Virgin Islands legislature, pursuant to section 79, by declining to assent to a Bill and reserving it for the signification of her Majesty’s pleasure as he has recently indicated he will do with the Disaster Management Bill.
10. The only notional accountability for the exercise of his powers lies in the Secretary of State’s duty to account to the UK Parliament in which Virgin Islanders have no right to be represented. The practical reality is that there is no effective democratic and parliamentary scrutiny of the actions and exercise of authority of a Governor of the Overseas Territories. See *Report of the Foreign Affairs Select Committee Global Britain and the British Overseas Territories Resetting the relationship Fifteenth Report of Session 2017–19 at ¶ 12-13, 23, 34 to 36 and 57 and p. 29 at 3. [Annex 17: House of Commons Foreign Affairs Committee Fifteenth Report of Session 2017–19, Global Britain and the British Overseas Territories: Resetting the relationship]*. See also *The UK’s Response to Hurricanes in its Overseas Territories* ¶24 [Annex 14: House of Commons Foreign Affairs Committee Ninth Report of Session 2017–2019 *The UK’s Response to Hurricanes in its Overseas Territories*] and *The UK’s Response to Hurricanes in its Overseas Territories – Government Response* ¶7 [Annex 15: House of Commons Foreign Affairs Committee Ninth Report of Session 2017–19, *The UK’s Response to Hurricanes in its Overseas Territories – Government Response to the Committee’s Fifth Report of Session 2017–19*].
11. The exclusion of Virgin Islanders from effective democratic participation in, and the lack of accountability to them or to the legislature for, critical parts of their own government is profoundly inimical to good governance.
12. First, there is no means by which decisions, not obviously unlawful, of Governors, on instructions from the Secretary of State or otherwise, can be challenged or improved by democratic scrutiny.
13. Secondly, it is not only the courts that are responsible in a democracy for upholding the rule of law. Since even unlawful decisions often may not, for pragmatic reasons, be challenged in the courts, public scrutiny by the legislature can underpin observance of the rule of law in the Virgin Islands.

14. Thirdly, the existence of an undemocratic executive authority means that, while it holds the power to affect the Government's political fortunes, it does not need to respond in a timely way or at all to democratic pressures and interests, while the elected arm of the Government does. Nor is the Governor bound by the principle of collective Cabinet responsibility, which he chairs but of which he is not a member. Such a situation possesses an inherent risk of friction and distrust.
15. Finally, the very fact that a substantial portion of executive power is exercised by the Governor and his Office, while being democratically unaccountable in the Virgin Islands, helps to prevent them from developing the capacity for free, self-governing political institutions that could lead to their self-determination.
16. It is for those reasons that, in the view of the Ministers, the compass of the police and executive powers exercisable by the Governor under section 60 of the Constitution should be narrowly confined to those matters that are demonstrably necessary to the discharge of the Governor's special responsibilities.
17. An expansive conception of those powers, and of the role of the Governor in the internal government of the Virgin Islands, is bound to be in tension with the principles of democratic legitimacy, "*effective political democracy*" and accountability, which are inextricably linked with good governance and with the maintenance of human rights and the rule of law. (Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels, 24 September 2012 at ¶ 5 [**Annex 11: Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels**]).

The Public Service

18. An important aspect of the Governor's executive responsibilities is the terms, conditions of service, appointments to offices in, and discipline of, the public service, including the skills, training, methods, codes of conduct, practices and procedures and organisation of public officers. In these tasks, pursuant to section 38 of the Constitution [**Annex 7: The Virgin Islands Constitution Order 2007**], he is to be assisted by the Deputy Governor, who is, however, always subject to the Governor's instructions.
19. As the Governor correctly emphasises (at ¶64), therefore, the performance, independence and conduct of public officers is ultimately his responsibility,

"unless otherwise agreed between the Governor and the Premier, the department is under the supervision of a Permanent Secretary who is a public officer. Moreover the power specified in section 56 is without prejudice to the Governor's responsibility under section 60 of the Constitution for the terms and conditions of the public service, the role of the Public Service Commission in the making of public appointments and the ultimate responsibility of the Governor for the disciplinary control of public officers and /or their removal from office."
20. Neither the House of Assembly nor an elected minister have the power to initiate alterations of the General Orders, or in the internal organisation and methods of the public service, which have remained essentially unreformed since 1982. The management of the public service and the responsibility for driving public service reform has always exclusively resided with the Governor and his assistant, the Deputy Governor.
21. However, while accepting that the management of the Public Service lies ultimately with him (Letter to the Commission, dated 15 July 2021, referring to paragraph 132 of the Ministers'

Position Statement) [**Annex 50: Letter from the Governor to the Commission**], the Governor states that “*financial support to enable capacity building sits with the Financial Secretary.*”

22. The Commissioner might be intended to infer from this that successive Governors and their Deputy Governors have been denied the financial resources by Ministers to carry out the urgently necessary reforms for which they have been long and eagerly pressing to remedy the chronic state of institutional neglect and decay in which the public service finds itself.
23. If that is the intended inference, no evidence whatsoever is cited to support it, and it would be wholly unjustified.
24. First, the FCDO has consistently pressed the Government to reduce the size, growth, operating costs and wages bill of the public service. No doubt because of that pressure, an external recruitment freeze in the public service was proposed to the Cabinet by the then Governor in 2010, which was implemented until 2012, and a further freeze on external recruitment was proposed to the Cabinet by the former Governor in a Cabinet Paper, dated 28 May 2018 [**Annex 16: Cabinet Paper Memo No. 146 of 2018**], and subsequently adopted. Annual performance increments have not been paid since 2016/17. The former Governor then stated [¶9],

“9.....Accounting Officers would be expected, where possible, to strictly deploy various measures to control the growth of the Service, such as internal advertisements, job merging, job sharing and overall sharing of resources..... Exceptional cases of external recruitment will be presented to the Governor for a decision in accordance to section 92 of The Virgin Islands Constitution Order 2007.”

He continued,

“Cross-Ministry Coordination

11. The Deputy Governor’s Office fully supports the HR Recruitment Strategy to reduce the escalating costs of personal emoluments. This subject has been discussed with Senior Managers, who represent the various Ministries, and it is understood and agreed that such austerity measures should be taken to address the significant implications of increased emoluments.”

25. There is no doubt that these policies have led to serious difficulties within the public service and Ministers consider a different and more balanced approach is necessary. Therefore, we have approved the payment of the annual performance increments for the years 2016/17 and 2017/18. Further, we have strongly advocated a comprehensive review of pay structures within the whole of the public service (see ¶ 43 & ¶ 44 below).
26. Secondly, no particulars are given as to *any* occasion on which a request to provide financial support for a serious, credible and coherent plan for transformative change in the public service has been declined by the existing or any previous Cabinet.
27. That may be because no proposal for the desperately needed transformation of the public service was forthcoming from successive Governors and Deputy Governors until *late 2017*, when in the aftermath of the hurricanes, an embryonic proposal to examine the transformation of the public service was raised with the Cabinet and approved. Thereafter, the current Deputy Governor has developed the Public Service Transformation Plan, which has been supported by the Government and which prompted the instruction of Public Administration International and their reports, to which the Ministers have previously referred (See Ministers Position Statement-Governance, Annex 11 and paragraphs 46 to 55).
28. Furthermore, the Cabinet has recently approved the purchase and installation of new JD Edwards Accounting software, which will in due course allow for the public service to deploy

modern human resources management tools in the ministries. Those tools will permit the Department of Human Resources to invigilate the maintenance of the personnel records of the ministries and ensure that regular performance appraisals of public officers are carried out. The information necessary for the Department and the Public Service Commission to consider promotion and other decisions affecting public officers will not, as is now the case, only be made available to the Department by the ministry at the time such decisions are to be taken.

29. In addition, the Cabinet has approved the Human Resources Department's proposal to commence a job evaluation and classification exercise, which will lead to the revision of public service pay structures (see [Annex 37: Cabinet Extract Memo No. 10 of 2021, and ¶ 43 & ¶ 44 below]. It is these existing pay structures, which are a central part of the terms and conditions of public officers' employment, that Ministers believe are a significant cause of many of the problems in recruiting to posts in the public service.
30. In his letter to the Commission of 15 July 2021, referring to paragraph 132 of the Ministers' Position Statement the Governor also states that

"Additionally, good policy formulation by officials is dependent on clear Ministerial Policy guidance. It is not feasible to drive effectiveness and capacity of the public service without both of these."

31. Again, with respect, this is a poor excuse for decades of neglect of a critical constitutional responsibility. First, there is no evidence that any adequately conceived and sustained attempt has (at least until very recently) ever been made to "*drive effectiveness and capacity of the public service*". It could not be for Ministers to initiate the necessary public service reform but for the Governor and his Deputy who are constitutionally responsible.
32. One of the problems with the situation of constitutional responsibility for public service performance and efficiency with the Governor is the lack of democratic accountability and that Ministers do not "own" this issue, which is so important to the practical success of an elected Government.
33. The previous Governor prominently asserted his right exclusively to initiate and drive the proposed change and reorganisation despite their importance to the elected Government. If, as is no doubt the case, active ministerial support is needed, it might have been both more politically skilful and more effective to reinforce that active support by enlisting elected Ministers in a leading role in the process, as Ministers acknowledge the current Governor has now done.
34. Secondly, it is the well understood function of a Public Service efficiently to translate the often very general political objectives and commitments of party manifestos into workable policy options. If the capacity and understanding of the need for detailed policy formulation is not there, ministers will not even be asked the right questions. In its convincing diagnosis of the chronic deficiencies of the Public Service, Public Administration International does not once mention a lack of "clear ministerial policy guidance" as a problem.
35. If there have indeed been attempts in the past to exert on Public Officers "undue political influence on their work", as to which once again no evidence is cited, it may well be precisely because of the frustration that ministers will have felt when the public service has seemed incapable of effectively implementing their political commitments within a timescale that has remotely reflected political realities. This is an experience which is not unique to the Virgin Islands, but the situation is particularly acute here.
36. If this problem *has* existed, it made it all the more imperative that the Public Service General Orders were long ago replaced by a modern Public Service Code and human resource

management systems (see ¶ 29 above) accompanied by effective mechanisms for redress. This would have required the necessary leadership from successive Governors. Governors cannot on the one hand complain of political interference undermining good governance in the public service and on the other absolve themselves of responsibility for the obvious organisational and other changes that would have helped to remedy the problem.

37. Furthermore, there was nothing to prevent successive Governors from proposing appropriate reforms in areas in which consistent cross-departmental practice would be desirable. For example, if former Governors were unhappy with the lack of a suitable system of appointments to statutory boards and bodies, it is difficult to see why the public service could not properly have been given the task long ago of developing written guidance for Permanent Secretaries in advising the Minister on his statutory responsibilities. No such guidance has ever been proposed or apparently even contemplated.
38. Similarly, the current record-keeping practices and efficiency of public officers in recording reasons for decisions and other functions in the ministries and departments are not matters that lie within the responsibility of Ministers. It is a matter for the Permanent Secretaries and the Governor. It cannot now be plausibly suggested that the manifestly parlous state of this *core function* of the public service, now laid bare by the Inquiry, is something for which Ministers, past or present, are to be held accountable.
39. If, as the Governor insists, he must retain the exclusive responsibility for the management and performance of the public service, he cannot at the same time wash his hands of the inevitable ramification of such a responsibility, which is accountability for serious failings in its management.
40. Yet, again, in his Position Statement, the Governor apparently seeks to do precisely that.
41. For example, at ¶ 115 he observes of the Attorney General's Chambers,

“Current rates of pay for lawyers in the DPP's office and the Attorney General's office also appear to fall short of what is required to attract sufficiently qualified candidates to fill current vacancies.”
42. However, the Attorney General has informed Ministers (who have every interest in ensuring that competent and timely advice, which directly and acutely affects their ability to make progress with the work of their ministries, is available to them) that the problem is long standing and that she has made repeated requests to the Department of Human Resources to permit higher rates of remuneration. She was told by the Department that it was not practicable, within the current pay structure of the service, to award higher rates to legal officers in her Chambers. In other words, the increase in the levels of remuneration for legally qualified personnel would require a complex re-evaluation of the pay structure throughout the service.
43. The Department of Human Resources only submitted a paper to the Cabinet for approval for the commencement of the necessary process of public service job evaluation and classification on 6th January 2021, and approval was given by the Cabinet on 7th January 2021 [**Annex 37: Cabinet Extract Memo No. 10 of 2021**]. In the meantime, given the severity and urgency of the problem, in July 2021, the Deputy Governor commenced a separate review of the salaries of legal officers.
44. These are welcome developments but Ministers are bound to point out that the Department of Human Resources and, all matters connected with the terms and conditions of public officers such as pay structures fall under the direction and control of the Governor, assisted by the Deputy Governor. The Department is a critical instrument of the Governor's discharge of his

executive responsibilities for the public service, under section 60(1) (d) of the Constitution (set out at ¶ 7 above).

45. Similarly, at ¶ 115, the Governor observes,

“A further major challenge affecting both the RVIPF and the office of the DPP is that of resources, both for recruitment to fill vacant slots and for training. The outgoing Commissioner of Police in his 2020 report noted that the RVIPF regular allocated budget falls far below the reasonable cost required to maintain the competencies and highly skilled requirements and demands in investigating crime and bringing offenders to justice. The RVIPF currently has 67 roles unfilled, approximately one fifth of the total workforce. Funding for vital repairs and maintenance of police vessels is also needed.”

46. At ¶68, the Governor states,

“The independence of the DPP and of the Commissioner of Police in their decision making are strengths in the system of good governance. But the effective functioning of their offices is dependent on adequate financial resources being provided for their work, which decision lies with the Minister of Finance and Cabinet, subject to the extraordinary power of the Governor under section 103 of the Constitution to order payments out of the Consolidated Fund.”

47. Yet, Ministers are unaware of any request by the outgoing Commissioner of Police for additional resources for recruitment that they have declined. Indeed, during the last budgetary discussions, the outgoing Commissioner of Police was specifically asked what sum he needed to finance the police and his wishes were followed.
48. The problems with recruitment, which have existed in the police force for many years, are not a lack of willingness to allocate the necessary public expenditure. They reside in established pay structures not keeping up with need and expectation, low morale, a damaged reputation, and a lack of candidates wishing to take up the role. There has also been a lack of succession planning for retirements and inevitable departures. These matters lie under the superintendence of the Governor. If money was the sole solution, successive Governors have had available to them the power under section 103 of the Constitution to direct the expenditure needed [**Annex 7: The Virgin Islands Constitution Order 2007**, section 103].
49. However, as we have observed above, no practical instrument of public accountability for the conduct of these responsibilities has existed under the Constitution. The Ministers consider it will be important evidence of the Commission’s independence in its examination of the governance of the Virgin Islands that, where warranted, *accountability* for failings by successive Governors, and those who instruct them, is impartially and fairly reflected in its report.

Lines of authority in the public service

50. Ministers do not doubt there is much to improve but it would be implausible if a Governor, and those who appoint and instruct him, were to pretend the UK is a neutral or impartial actor in the governance of the Virgin Islands or that it can be wholly extricated from and absolved of responsibility for its failings.
51. That the UK’s perceived interests are paramount in the FCDO’s interactions with the Virgin Islands or that those interests are sometimes pursued at the expense of the interests of the Virgin Islands may not be surprising but it should at least be acknowledged. Of the offer of the Loan Guarantee, to assist the Virgin Islands at a time of great vulnerability in its recovery from the catastrophe of the 2017 Hurricanes, the Governor states

“The loan guarantee was offered to the Government of the British Virgin Islands with fiscal responsibilities attached to it set out by the Cabinet Office of the UK Government. I attach a copy of the Cabinet Office documentation (Annex B) giving an overview of the contingent liability process. It is for the BVI Government to decide whether or not to accept a loan guarantee. This remains a supportive offer to the British Virgin Islands Government with conditions that meet the stringent accounting requirement for public sector contingent liabilities.”

52. The Ministers note that the Virgin Islands have not received grant in aid from the UK since 1978. However, as Ministers have observed, in seeking to mitigate the risk of the UK’s contingent liability, which is a clear policy imperative for both the proposed Loan Guarantee arrangements and the Protocols for Effective Financial Management (PEFM), the FCDO has attached broad conditions and demands regarding the conduct of the economic policy of the Virgin Islands (such as the disposal of assets in public ownership and the requirement to hold 25% of its annual recurrent expenditure in unallocated liquid funds) that encroach not only on their financial freedom of manoeuvre but also upon their legitimate aspiration to govern and make important political and economic choices for themselves
53. The Governor presents this as a choice for the Virgin Islands Government, but in a relationship of such unequal bargaining power, that choice may often not appear a real one. This is so particularly when, as in the case of the Loan Guarantee, the FCDO has informed the Government, if it rejects the Loan Guarantee, it will not look favourably under the PEFM on any alternative borrowing and when it was accompanied by intense and unusual pressure from the Governor, who went so far as to place the papers for signature before the Premier immediately upon swearing him in.
54. Therefore, the Ministers feel that they are bound to exercise vigilance in championing the rights, prerogatives and interests of the Virgin Islands and its elected Government, which is not, and is not to be treated as if it were, an arm of UK local government.
55. At ¶64 and ¶65, the Governor asserts, without particulars, that confidence in the public service has been eroded because political ministers have made “*perceived attempts*” to exert undue political interference on the work of public officers and created uncertainty over lines of authority *inter alia* by insisting that interaction by the Governor’s Office with their ministries should be carried out through the Premier’s Office. This is a highly lopsided perspective and illustrates the problem to which we have previously adverted in the Position Statement.
56. Section 56(5) of the Constitution [**Annex 7: The Virgin Islands Constitution Order 2007**] assigns the constitutional responsibility for the administration, direction and control of a department of government to the Minister, including directing the implementation of government policy. “*Subject to that control and direction*”, the department is to be under the supervision of a permanent secretary who is to be a public officer.
57. A Minister, therefore, has both a legitimate interest in, and a right to be consulted on, the suitability and performance of senior public officers in his ministry or department. He is entitled to express his opinion both to his permanent secretary and to the Deputy Governor on such matters. This is not to be construed as “*undue political interference*”, but it does require good leadership of the public service to manage possible tensions together with modern systems of training and management.
58. The Ministers fully accept that the Governor, pursuant to section 56(7) of the Constitution, has the right to request official papers “*from a Minister*” or seek from him any official information or advice available to that Minister with respect to a matter for which that Minister is responsible. It is, or should be, a normal and basic courtesy to the Minister, however, to address such a request *to him* or his private office so that he is aware of the request. Furthermore, it is a

legal condition of the Governor's request that he should inform the Premier of it. It has been the experience of Ministers that neither the courtesy nor the duty has always been observed and that direct contact has been made by the Governor's Office, sometimes with quite junior officials, to demand information or action of which the Minister and the Premier are unaware.

59. In addition, the Governor suggests (§ 65) that the Ministers' insistence that his Office should interact with ministries through the Premier's Office "*cuts across*" his power, pursuant to section 60(8) of the Constitution [**Annex 7: The Virgin Islands Constitution Order 2007**], to direct any person or authority in the exercise of a function where he determines that function "*would involve or affect*" any matter for which the Governor is responsible under section 60(1) [**Annex 7: The Virgin Islands Constitution Order 2007**]. However, that power may only be exercised "*after consultation with the Premier*". Once again, it has been the experience of Ministers that the Governor's Office has issued directions to officials in the ministries and departments without observing that condition.
60. As the Ministers have previously sought to highlight, the former Governor adopted an expansive interpretation of his section 60 responsibilities with which the Cabinet did not always agree.
61. For example, he argued that the Government's measures to contain and combat the Covid-19 pandemic should be led by him and by the Department of Disaster Management in accordance with the provisions of the Disaster Management Act. However, there are unequivocal and long-standing statutory provisions that assign responsibility and powers to manage serious outbreaks of disease to the Minister of Health [**Annex 20: Minutes, Cabinet Meeting No. 13 of 2020**]. The Cabinet resisted the Governor's interpretation, and the matter was eventually resolved in favour of the Ministry.
62. Furthermore, as we have maintained in our Position Statement, both the FCDO and the Governor's Office have evinced a lack of respect for the equal and modern partnership and the constitutional right of the Virgin Islands to self-government, which has ostensibly been the policy of successive UK Governments. This pattern of behaviour, regrettably, continues.
63. In 2016, the UK launched a 'Blue Belt Programme' which was a voluntary programme from which the UK's Overseas Territories ("OTs") could seek support for marine protection and sustainable management of the marine environment [**Annex 12: Blue Belt Programme - Annual Update Financial Year 2017/2018**]. In 2019, there were discussions between the Virgin Islands and UK Governments on the territory's potential participation in the programme [**Annex 18: Annex: Emails regarding the Blue Belt Symposium**]. However, no agreement was reached, and the Virgin Islands did not join.
64. Nevertheless, on 3 April 2021, the FCDO issued a press release announcing, "*the world's first network of underwater camera rigs is being rolled out across the British Overseas Territories*", including the Virgin Islands, "*as part of the UK Government Blue Belt programme*" [**Annex 39: UK Government webpage, 'Fish eye lenses: UK launches world's largest ocean monitoring system to protect wildlife and biodiversity'**]. The Governor also issued a statement on Twitter that the Virgin Islands would be part of the Blue Belt Programme [**Annex 40: Governor Statement on Twitter regarding the Blue Belt Programme**]. Despite correction by the Department of Agriculture and Fisheries, neither the press release nor the Governor's tweet has been withdrawn or amended.
65. More substantially, the UK acceded to the International Convention for the Conservation of Atlantic Tunas ("ICCAT") in 1995 [**Annex 3: UK Accession to the International Convention for the Conservation of Atlantic Tunas (ICCAT)**]. In 1998, following the European Community (now the European Union)'s accession to ICCAT, the UK became part of the European Community's delegation and the Virgin Islands, Bermuda, the Turks and Caicos Islands and the Territory of Saint Helena, Ascension and Tristan da Cunha formed a separate

delegation to ICCAT [**Annex 4: ICCAT Report for biennial period 1998-99 – Part II (1999) Volume 1, pp. 58-59**]. These four Territories had a separate catch limit for albacore tuna up to a threshold of 200 tonnes per annum which they could allocate among themselves (and which was not subject to any other quota restriction) [**Annex 13: Recommendation by ICCAT on a multi-annual conservation and management programme for North Atlantic albacore, para. 9**].

66. Following the UK's withdrawal from the European Union, the UK deposited a further instrument of adherence to ICCAT in respect of both the metropolitan UK and its OTs, which became effective on 21 October 2020 [**Annex 36: UK Instrument of adherence to ICCAT**]. The effect of this was that there would be one delegation and both the UK and its OTs would be allocated one catch limit for albacore tuna of 434.04 tonnes per annum [**Annex 46: ICCAT Circular No. 4088 of 2021**].

67. In depositing a further instrument of adherence to ICCAT in respect of both the metropolitan UK and its OTs in October 2020 and agreeing to this new catch limit, which in effect reduced the OTs' previous threshold for albacore tuna, the UK Government acted in a manner that may have ensured its interests but that was not in the interests of the Virgin Islands. This is despite the UK's assurances that it would:

"seek to ensure that any change in the share of quota available to the UK as a consequence of its withdrawal from the EU does not prejudice the fishing opportunities available to the Overseas Territories. The UK Government will seek to ensure that the Overseas Territories retain the share of quota that they currently receive in ICCAT."
[**Annex 38: Final draft of Memorandum of Understanding between the UK Government and the British Overseas Territories relating to ICCAT, para. 8**]

68. The UK Department for Environment, Food and Rural Affairs ("DEFRA") proposed to the Department of Agriculture and Fisheries an allocation of 10 tonnes as the catch limit for the Virgin Islands in respect of albacore tuna [**Annex 48: Email from Jess Keedy to Carolyn Stouff-Igwe and Theodore James**]. No agreement was reached. Even although discussions on the division of the quota were not completed, on 28 June 2021, the Governor's Office wrote to officials at the Virgin Islands Department of Agriculture and Fisheries stating that:

"If we do not hear from yourselves by the 30th June, I will inform DEFRA that the proposed allocation [of ten tonnes] is acceptable." [**Annex 47: Email from Paul Eason to Abbi Christopher**]

69. Such a statement by the Governor's Office is inconsistent with section 56(5) of the Constitution. Fishing policy is for the Minister and the Cabinet to decide. It was not, in any circumstances, for the Governor to agree to the allocation nor should such a communication have been made to officials without informing the Minister or the Premier or raising the issue in Cabinet.
70. Notwithstanding that it knew that the Virgin Islands had not agreed to the allocation for the Territory, on 12 July 2021, DEFRA wrote to the Ministry to inform it that the UK Government had allocated the 10 tonnes catch limit to the Virgin Islands [**Annex 49: Letter from DEFRA to Director of Agriculture and Fisheries, Government of the Virgin Islands**].
71. While the Government understands that the UK Government may consider its allocation of catch limits to be "fair", the unilateral allocation of the Virgin Islands' catch limit for albacore tuna is inconsistent with a "*partnership ...based on consultation and mutual understanding*". It is also incompatible with the UK Government's responsibility to respect the Virgin Islands' autonomy and self-government and to act in the Territory's best interests.

72. The elected Government has a legitimate interest in preserving fishing opportunities for its fishing industry and to allow for expansion and promotion of the fishing sector in the Virgin Islands. It has the mandate and responsibility to determine the Virgin Islands' fishing policy. Since 2015, the Government has been developing a strategy to promote the territory's fishing industry as the third pillar of the Virgin Islands economy.
73. The reduction from a possible 200 tonnes, to be negotiated with the other relevant Territories, to a fixed quota of 10 tonnes for the development of its tuna fishing industry is not in the interests of the Virgin Islands.
74. In the elected Government's view, seen cumulatively, these steps taken by the UK Government demonstrate a continuing carelessness on the part of the UK Government and the Governor's Office for the rights of the democratically elected institutions of the Virgin Islands.
75. Therefore, Ministers have adopted the practical expedient of insisting that interaction between the Governor's Office and their Ministries on matters of policy, or where the Governor may invoke section 60(8) of the Constitution, should, *in the first instance*, be through the Premier's Office. By that means, the Ministers can ensure they are aware of the interaction and agreed that the matter is a proper exercise of the Governor's constitutional powers and that, as the Constitution intends, the Premier is informed or consulted. This would not otherwise have been necessary.
76. In the Ministers' view it is these political and constitutional tensions that have contributed to uncertainty in the public service, which is caught in the middle of them. The tensions caused by the UK Government's policy to impose a public register of beneficial ownership on the Virgin Islands in the context of the Sanctions and Anti-Money Laundering Act 2018, the conditions of the loan guarantee offered by the UK, and by the Government's strained relationship with the former Governor have already been addressed in the Position Statement (at paragraphs 11 to 39), and Supplementary Note.
77. The Ministers note that the international legitimacy of its authority over the Virgin Islands is conditional on the UK's observance of its obligations in international law and Article 73 of the Charter of the United Nations [**Annex 1: Charter of the United Nations Article 73**]. The current situation can *only* be justified on the premise that it is no more than a step on the road towards self-determination and greater self-government.

Chairing the Cabinet

78. The Ministers observe that the exchange of correspondence, exhibited at Annex C to the Governor's letter of 15 July 2021 [**Annex 50: Letter from Governor to the Commission**], clarifying the scope of section 49 of the Constitution [**Annex 7: The Virgin Islands Constitution Order 2007**] only applies to an *acting governor*, appointed and sworn in under s.37(1) & (2) [**Annex 7: The Virgin Islands Constitution Order 2007**], and that they have not suggested anything to the contrary in the Position Statement. An acting Governor fully occupies the office of Governor for the time being and is not subject to the instructions of any other person save the Secretary of State as provided by the Constitution.
79. However, for absences of shorter duration, the Governor has invariably purported pursuant to section 39 [**Annex 7: The Virgin Islands Constitution Order 2007**] to delegate the duty to preside over the Cabinet to the Deputy Governor as his "*deputy*", who is bound to comply with the Governor's instructions. In the Ministers' view, this is manifestly unconstitutional.
80. The very fact that the Governor has purported to *delegate* the function of chairing the Cabinet to a *deputy* illustrates that he remains the Governor, retains his power and authority, and must

be “absent” for the purposes of section 49 [**Annex 7: The Virgin Islands Constitution Order 2007**]. There cannot be two Governors. Section 49 contains no such qualification as appears in section 37(4) that the Governor shall not be regarded as “absent” if there is a subsisting appointment of a deputy under section 39. Yet, if section 2(3) always operated to allow a deputy to fill the place of the Governor, that provision would not have been needed [**Annex 7: The Virgin Islands Constitution Order 2007**].

81. The Ministers do not accept, therefore, that the Constitution plausibly permits the Cabinet to be chaired by his deputy or that the general provision of section 2(3) [**Annex 7: The Virgin Islands Constitution Order 2007**], which is an interpretative tool, and if it is applicable, applies only unless otherwise provided or required by the context, can override the specific and mandatory terms of section 49, which precisely determine who chairs the Cabinet when the Governor (or acting Governor) is absent.
82. In the context of Cabinet discussions, there are good reasons of principle why this should be so. The nature of the Cabinet, as a deliberative body that shapes and decides Government policy throughout the years of its elected term, requires the Chairman to be familiar with the continuity of its discussions and to steer and guide those discussions accordingly. The Cabinet’s agenda is set by the Governor and the Premier, assisted by the Cabinet Secretary (section 49(4)). The Premier is, therefore, the logical and natural person to assume the chairmanship of the Cabinet during the short absences of the Governor. Furthermore, the free and candid discussions characteristic of Cabinet government are inherently inappropriate for the participation of a deputy under instructions and without the constitutional authority to offer his own views. Attendance at Cabinet meetings cannot be delegated [**Annex 10: The Cabinet Manual - A Guide to Laws, Conventions and Rules on the Operation of Government**, at ¶ 4.37].
83. The intention, then shared by both Governments (as Susan Dickenson’s note confirms), in so providing for when the Governor or acting Governor was absent for short periods, was no doubt to foster a close working relationship between the occupants of the two offices at the summit of the Virgin Islands Government, and to serve the purpose of encouraging and promoting the capacity of Virgin Islanders for self-government.
84. By denying the important effect of this constitutional provision, the Governor and the FCDO frustrate that objective, which is closely in line with the UK’s international law responsibilities, a timely reminder of which has been given at the meeting, held between 14 and 25 June 2021, by the United Nations Special Committee on Decolonization, which adopted the following statements in its draft declaration, at 2. 3. and 4. [**Annex 46: UN Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial countries and Peoples – Draft Resolution**],

“...in the process of decolonization of the British Virgin Islands, there is no alternative to the principle of self-determination, which is also a fundamental human right, as recognised under the relevant human rights conventions;

.....that it is ultimately for the people of the British Virgin Islands to determine freely their future political status in accordance with the relevant provisions of the Charter, the Declaration and the relevant resolutions of the General Assembly, and in that connection calls upon the administering Power, in cooperation with the territorial Government and appropriate bodies of the United Nations system, to develop political education programmes for the Territory in order to foster an awareness among the people of their right to self-determination in conformity with the legitimate political status options, based on the principles clearly defined in Assembly resolution 1541 (XV) and other relevant resolutions and decisions;

Recalls the 2007 Constitution of the British Virgin Islands and stresses the importance of continued discussions on constitutional matters, to accord greater responsibility to the territorial Government for the effective implementation of the Constitution and increased levels of education relating to constitutional matters.”

Cabinet Papers

85. The Ministers note the present Governor’s comments on his experience but observe that Cabinet Papers submitted by the Governor’s Group are also frequently late.
86. Rule 4.12 of the Cabinet Handbook [**Annex 9: Cabinet Handbook, Section 4.12**] provides for exemption from the “Two-Day Rule” in cases where it is necessary to do so but approval is required from the Cabinet Steering Group (the Governor, the Premier and the Cabinet Secretary) by request to the Cabinet Secretary. In this connection, Ministers must have satisfied themselves that a genuine case exists for this course of action. Exemptions to the “Two-Day Rule” should be sought only in cases where not to do so will result in disruption or delays in implementation of a Ministry’s business.
87. For the period 19 March 2019 to 24 June 2021, the Cabinet considered and approved 1,189 Papers, of which 923 (77.6%) Papers were presented with at least two working days’ notice, and 266 (22.4%) were permitted to be presented with less than two days’ notice. The Governor’s Office and the Deputy Governor’s Office submitted 102 Papers to the Cabinet of which 26 Papers or 25.5% of Papers were late [see Analysis at **Annex 51: Report - Cabinet Papers Analysis**].
88. The Ministers observe that this period, of course, covered a time of exceptional emergency and major strain on the public service, which continues with the additional pressures of the Commission of Inquiry.

Tender Waivers

89. The Ministers have already observed that applications to the Cabinet for tender waivers have become an embedded and bad habit of all parts of the Government, including the Governor’s Group (Ministers’ Position Statement-Governance ¶ 43 & 44). The causes include poor planning and policy formulation for the future needs and purposes of the departments, offices and ministries. New procurement legislation is at an advanced stage of preparation [**Annex 43: First Affidavit of Dr. Drexel Glasgow**, at ¶ 131, and **Annex 44: Pages 492-494 of Exhibit DG-1**]. However, as we have previously indicated, to tackle the root causes, major and sustained modernisation of the public service, with long term, genuine and substantive technical support from the UK, as promised in the 2012 White Paper, is required (Ministers’ Position Statement-Governance ¶ 131).
90. As to the EZ Shipping contract, the Ministers observe that the Governor’s comments that there was no cost-benefit analysis of the proposal and that it was not agreed prior to signature either by the National Security Council (“NSC”) or by the Joint Task Force (“JTF”) do not fully reflect the facts. Given the extreme urgency of the situation, the barges were deployed prior to formal execution of the contract. However, both the JTF and the NSC were closely involved in that decision and the NSC certainly approved the contract prior to its signature.
91. The ministers believe the relevant chronology of events to have been as follows.
92. Between 21 and 25 May 2020 a JTF “*Comprehensive Border Security Plan 3 month projection*” and 3 month supporting spreadsheet was prepared and sent to the Ministry of Finance [**Annex 23: National Security Council Memo No. 8 of 2020, and Appendices A–D**].

93. On 24 and 25 May 2020, following exchanges between Mr Frett and the Financial Secretary, copied to Messrs Lettsome and Romney [**Annex 22: Email exchanges between Mr Frett and the Financial Secretary copied to Messrs Lettsome and Romney**], a revised Draft NSC Paper was produced, which included reference to the “*Adoption of a Border Management Systems [sic] and a radar platform at key locations*” (p.2 para.7) [**Annex 23: National Security Council Memo No. 8 of 2020, and Appendices A–D**]. The 3 month projection and supporting spreadsheet were attached as Appendices A and B.
94. On 26 May 2020, the NSC, reviewed the JTF “*Comprehensive Border Security Plan 3 Month Projection*” and asked that it be split into a 3 and 6 month plan [**Annex 24: Email from Cabinet Secretary 'COVID-19 Border Security Plan for the BVI – Memo No.009_2020' and attached Memo, and Annex 42: COI Hearing Day 7 p.184/19-25**].
95. On 3 July 2020, Cabinet decided the JTF should reconsider the offers by private owners, which included the EZ barge proposal, in time for an NSC meeting due to take place on 7 July 2020 [**Annex 25: Emails re EZ Shipping & Special National Security Council Meeting**].
96. On 7 July 2020, the NSC held a meeting at which they did not then agree to the EZ barges proposal, but decided that it should be further considered, that Customs should look at the EZ pricing and Mr Mathews should look at charter industry options (See **Annex: COI Hearing Day 7**, p.207/20–p.208/5).
97. On 20 July 2020, the JTF produced a further draft of its ‘Border Security Plan Equipment & Resources Costing’, together with a further draft of a 3 and 6 month spreadsheet, prepared in accordance with the NSC’s direction of 26 May 2020, which contained costings for the barges proposal [**Annex 26: Email from Mr Romney to Mr Smith**]. The ‘Border Security Plan Equipment & Resources Costing’ included a cost-benefit analysis in respect of the barges proposal (pp 1-2) which suggested as follows:

“It may be prudent to utilize this service for one month” (as the cost) “pales in comparison to the cost of the Territory shutting down for a second time if the Coronavirus...is allowed to reach our shores, especially undetected. In addition, this temporary measure would allow the Territory to achieve its goals while working on the permanent measures” (p.2 2nd and 4th paragraphs).
98. Between 26 May and 22 July 2020, a JTF “*Comprehensive Border Security Plan 3-6 month projection*” was prepared and sent to the Ministry of Finance [**Annex 27: National Security Council Memo No. 11 of 2020 with Appendices I – III**]. This paper also included a cost-benefit analysis of the EZ barges proposal (pp 13-14), together with the suggestion that it may be prudent to use the service for a month and that the cost paled in comparison to that of shutting down the Territory for a second time (p.14 1st 2 paragraphs).
99. On 22 July 2020, a Memorandum for the NSC was prepared which invited the NSC to review and accept the “*Comprehensive Border Security Plan: 3-6 Months Projection*” and the 3 and 6 month spreadsheet referred to as the “*Joint Task Force 3-6 Months Comprehensive Border Security Estimates*”, attached as Appendices I and II [**Annex 27: National Security Council Memo No. 11 of 2020 with Appendices I – III**]. Appendix III contained the Comments of the Financial Secretary referring to his “*understanding that the proposed measures as communicated in the COVID-19 Border Security Plan are important for securing the Territory's Border*”. The plan was described as a “*collaborative effort between the primary border law enforcement agencies*” (Memorandum ¶ 8).
100. On 24 July 2020, the NSC reviewed and accepted Appendices I and II (the “*Comprehensive Border Security Plan: 3-6 Months Projection*” and Revision 5 of the 3-6 month spreadsheet) with their suggestions in respect of the EZ Barges [**Annex 28: Expedited Extract Memo No.**

11 of 2020 at (a) and (b)]. It also “*decided that the immediate priority funding areas to be taken forward by the Ministry of Finance*” included, in respect of the EZ barges proposal, “*at least two 24-hours platforms, in principle, to be negotiated by the JTF in conjunction with the Ministry of Finance following a rapid invitation of proposals for approval by the...NSC*” [Annex 28: Expedited Extract Memo No. 11 of 2020 at (c) (iv)].

101. There followed a series of urgent communications with various companies by members of the JTF [Annex 29: Communications with Various Companies, Annex 42: 2021.05.20 - COI Hearing Day 7 p.138/6- p.139/4 & p.140/20 – p.142/6, and Annex 41: COI Hearing Day 5 p.141/4-18]. By 21 August, the EZ proposal had been identified as the only viable option for a temporary barges solution and negotiations by the JTF and the Ministry of Finance had significantly reduced the price for 3 barges to \$14000 a day [compare Annex 21: EZ Shipping Proposal and Annex 30: Letter from EZ Shipping to the Commissioner of Customs]. On the same day, the Government announced the imposition of a curfew in reaction to an increased threat, including in respect of border security, from Covid-19.
102. On 23 August 2020, after a reported incursion, on 22 August, by illegal entrants at West End, Tortola, the barges were deployed [Annex 31: Cabinet Paper Memo No. 376 of 2020 at 8)].
103. On 25 September 2020, the NSC recommended an agreement with EZ for the provision of 3 barges for 60 days from 23 August 2020 at a cost of \$840,000 [Annex 33: Expedited Extract Memo No. 16 of 2020]. The Memorandum to the NSC [Annex 32: National Security Council Memo No. 16 of 2020 and appendices] referred to the unsuitability of the small vessels which had been used earlier in the year to monitor the sea approaches, the independent pricing research that had been undertaken, the need for swift deployment of the barges and their effective operation, including as noted by the Virgin Islands’ international counterparts in the region (at 2., 6., 8.-9. and 11.). The Ministry of Finance said that “*The cost to have this temporary measure put in place while working on a permanent measure, is miniscule to the cost of having to shut down our economy as a result of COVID-19 being allowed to be smuggled onto our shores*” (at 15.). On 7 October, the Cabinet endorsed that decision [Annex 34: Expedited Extract Memo No. 376 of 2020].
104. The first agreement with EZ was signed on 14 October 2020, for the provision of 3 barges at a cost of \$840,000, from 23 August 2020 to 22 October 2020 [Annex 35: Agreement between BVI Government and EZ Shipping at 3.1 and 5.1 and 1st Schedule B1, i (i)].
105. The Ministers believe that the Governor’s comments do not adequately or realistically reflect the nature of the crisis affecting the Territory and the imperative need for immediate measures to strengthen border security and to prevent illegal entry into the Virgin Islands from places of heavy infection (as noted in Annex 32: National Security Council Memo No. 16 of 2020 and appendices, at (a), 1., 5., 9., 14. & 15.). Normal procedures could not have been followed in such circumstances. The Ministers note that standard procurement procedures have been routinely suspended in the UK during the pandemic [Annex 19: Information Note PPN 01/20].

The Register of Interests

106. The Governor’s defence of his predecessor for requesting information from the Registrar as to the compliance of members of the House of Assembly with the Register of Interests Act (ROIA) is misconceived and appears, at least partly, to amount to the assertion that the Governor’s actions were legitimate because his motives, to uphold good governance and the Constitution, were benign. The legal pretext proffered for that assertion is that he did not request “*details of what had been entered in the Register.*” (letter of 15 July 2021, penultimate paragraph).
107. The former Governor, whom the current Governor appears to emulate in this flimsy apologia, seems simply to have ignored the statutory duty of the Registrar, under section 13 ROIA [Annex

6: Register of Interest Act 2006], to which she must subscribe her oath, not to disclose information *relating to* any declaration or matter in the Register *or* that she has acquired in the course of or in relation to her duties or in the exercise of any powers or performance of duties under the Act.

108. It can scarcely be disputed that the Registrar had acquired the information she gave to the Governor in the course of or in relation to her duties. The Governor is, of course, not above the law of the Virgin Islands and it would be ridiculous to contend that he could uphold the rule of law by breaking it.
109. The problem, as we have observed, is that the Governor is not politically and democratically accountable to its legislature or to the public for such acts and their consequences; he is also rarely the subject of challenge in the courts.
110. Indeed, the matter only came to light because of this Inquiry. To have invited the Registrar secretly to act in breach of her oath is a very serious matter indeed. If it were done knowingly, it could surely amount to serious misconduct.
111. The Ministers prefer the view that it was another example of the malaise that we so often encounter, and have attempted to describe in the Position Statement, which is a carelessness towards local rules and institutions, for the observance of which a Governor is not seriously politically accountable, and absent any effective challenge, about which it is all too easy for him to become complacent when he is persuaded that his own motives are good. That is the mindset not of a partnership in mutual respect and understanding but of colonialism.

**Response of the Elected Government to the Position Statement on Governance of His Excellency
Governor John Rankin CMG**



Hon. Andrew A Fahie
Premier and Minister of Finance



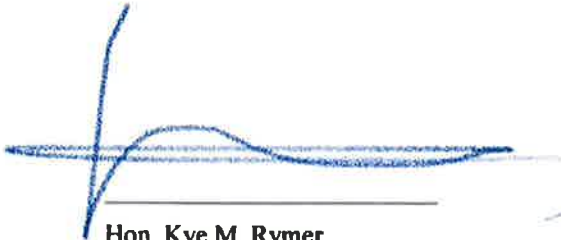
Dr. the Hon. Natalio D. Wheatley
Deputy Premier and Minister for Education,
Culture, Youth Affairs, Fisheries and
Agriculture



Hon. Carvin Malone
Minister for Health and Social
Development



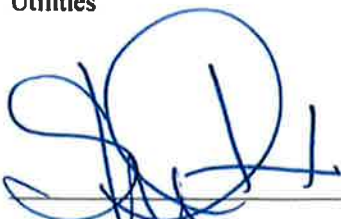
Hon. Vincent O. Wheatley
Minister for Natural Resources, Labour and
Immigration



Hon. Kye M. Rymer
Minister for Transportation, Works and
Utilities



Hon. Sharie B. de Castro
Junior Minister for Tourism



Hon. Sheren B. Plax-Charles
Junior Minister for Trade and Economic
Development



Government of the Virgin Islands
TTT Building, 4th Floor
P.O. Box 242
Road Town, Tortola VG1110, Virgin Islands

Our ref: AGC G 12/2/2

12 November 2021

Mr Steven Chandler
Secretary to the BVI Commission of Inquiry
Room RB 1.11
22 Whitehall
London
SW1A 2EG

Dear Mr Chandler,

BVI Commission of Inquiry - s.13 Register of Interests Act 2006

I refer to your letter dated 5 November 2021.

As regards the matters you raise on the second page of your letter, my responses are as follows:

The operation of the Register of Interests is a process controlled wholly by the House of Assembly, the Standing Select Committee being charged with the consideration of matters relating to the Register, including the receipt of reports from the Registrar regarding Members' Declarations, which may then be the subject of debate in the House of Assembly. It is within this context that Sir Geoffrey Cox QC responded to the Commissioner that he considered the Registrar's breach of s.13 ROIA to be a matter for the House of Assembly and his further remark: *"The issue first is whether or not the Governor invited her to breach her oath and to break her duty of confidentiality. It may well be thought by Members of the House of Assembly, that if those were the circumstances, she was put in a very awkward and invidious position."* (Day 51, p.100, lines 6-11).

In answer to your queries (a) to (e), if I thought it appropriate in the circumstances, I would forward evidence of a criminal offence by any person to the relevant agency for investigation. In this particular case, I have however made no decision nor have I taken any steps to date and do not intend to do so until the business of the COI has been concluded, consistent with Sir Geoffrey Cox QC's comment: *"I think the outcome of your Inquiry may well be reasonably awaited for these things."* (Day 51, p 99, lines 16-17).

Yours sincerely,

Dawn J. Smith
Attorney General

Table of Criticisms

| # | Criticism | Previous references | Evidence | Legal basis where applicable |
|--|--|--|---|--|
| Former Governor Jaspert | | | | |
| 1. | The former Governor's statements and actions led to a perception of disrespect for elected Government. For example, on 3 December 2020, the Former Governor briefed press that the Deputy Governor and he were to bring forward the Integrity in Public Life Bill, making no reference to previous Cabinet's decision to approve Integrity in Public Life Policy | Minister's Position Statement, p. 11, ¶ 36. Minister's Position Statement, p. 22, ¶ 91 – 92 | 3 December 2020 Statement (Annex 46 to Minister's Position Statement) Cabinet Extract Memo No. 378-2019 re Integrity in Public Life Policy (Annex 14 to Minister's Position Statement) | |
| 2. | The former Governor requested information from the Registrar of Interests, which could at least arguably be considered as a breach of her Oath of Office and of section 13(1) of the Register of Interests Act 2006. Such a request risked conveying the impression that the laws of the Virgin Islands do not apply in full to the office of the Governor. | Minister's Supplemental Note, p. 6, ¶ 25. Elected Government's Response to the Governor's Position Statement, p.15-16, ¶ 106 - 111. | See ' <i>Hearing for w/c 14 June 2021 – Bundle of Disclosure from Governor</i> ' and in particular at pages 1-5. (Not reproduced for reasons of size) | By section 13 of the Register of Interests Act 2006, the Registrar must subscribe to her oath, not to disclose information relating to any declaration or matter in the Register or that she has acquired in the course of or in relation to her duties or in the exercise of any powers or performance of duties under the Act. |
| The Government of the United Kingdom / FCDO | | | | |
| 3. | Failure on the part of the UK Government to respect the constitutional settlement of 2007, and failing to afford the people of the Virgin Islands the highest degree of control over the affairs of their country at this stage in their development by: | Minister's Position Statement, p. 9, ¶ 30. Minister's Supplemental Note, p. 1, ¶ 2. Minister's Supplemental Note, p. 2, ¶ 7. | | Preamble of the Constitution 1999 White Paper at ¶ 1.19 |

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| | | Minister's Position Statement, pp. 11-12, ¶ 39. | | |
| | <ul style="list-style-type: none"> Declining to allow the elected Government to assume responsibility for important spheres of governmental activity i.e. disaster management | Minister's Supplemental Note, p. 2, ¶ 8. Minister's Position Statement, p. 10, ¶ 34. Minister's Position Statement, pp. 10-11, ¶ 35. Elected Government's Response to the Governor's Position Statement, p. 9, ¶ 61. | See: letter from Governor to Premier dated 4 December 2020 Letter from Premier to Governor dated 9 December 2020 Letter from Premier to Governor dated 14 December 2020 Letter from Governor to Premier on 18 December 2020 Letter from Premier to Governor on 18 December 2020 Attorney General's Advice dated 21 December 2020 Minutes, Cabinet Meeting No. 13 of 2020 | Section 49(3) of the Constitution makes clear that the Cabinet has responsibility for the formulation of policy and directing the implementation of policy, except for those matters exclusively reserved for the Governor. |
| | <ul style="list-style-type: none"> Refusing to allow the Premier to preside over Cabinet meetings and instead purporting to delegate the responsibility to the Deputy Governor thereby frustrating the objective of according greater responsibility to the territorial Government for the effective implementation of the Constitution | Minister's Supplemental Note, p. 6, ¶ 24. Minister's Position Statement, p. 9-10, ¶ 30 - 33. Elected Government's Response to the Governor's Position Statement, p. 12 - 13 ¶ 84. | Torveny Law Chambers letter dated 28 September 2020 Letter from Premier to Baroness Sugg dated 30 September 2020 | Section 49 of the Constitution makes clear who are the persons to preside at Cabinet meetings. Section 38(2) and (5) of the Constitution also define the Governor's powers of delegation to the Deputy Governor. The Constitution does not plausibly permit the Cabinet to be chaired by the Governor's deputy. The general provision of section 2(3) applies only unless otherwise provided or required by the context. It |

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| | | | | cannot override the specific and mandatory terms of section 49, which precisely determine who chairs the Cabinet when the Governor (or acting Governor) is absent. |
| | <ul style="list-style-type: none"> Taking an approach to lines of authority and requests for information (i.e. that requests for information do not need to be carried out through the Premier's Office) | <p>Elected Government's Response to the Governor's Position Statement, p. 8 ¶ 55.</p> <p>Elected Government's Response to the Governor's Position Statement, pp. 8 – 9 ¶ 58-59.</p> | Governor's position statement | Section 56(7) of the Constitution and section 60(8) of the Constitution |
| Previous Governors | | | | |
| 4. | The Governor is constitutionally responsible for public service reform, but has neglected this responsibility. For example: | Minister's Supplemental Note, p. 7, ¶ 26. | | |
| | <ul style="list-style-type: none"> There is a lack of human resource, systems and infrastructure in place to allow policy development | <p>Minister's Position Statement, p. 15, ¶ 48 – 49</p> <p>Minister's Position Statement, p. 29, ¶ 128.</p> <p>Minister's Position Statement, p. 30, ¶ 132.</p> | See PAI's 'Strategic Policy, Planning and Performance in BVI – Organisational Design Report', in particular p. 6, (Annex 11 to Minister's Position Statement). | Section 60(d) of the Constitution: the Governor is responsible for the terms and conditions of service of persons holding or acting in public offices. |
| | <ul style="list-style-type: none"> The current pay structures are a significant cause of problems in recruiting to the public service | Elected Government's Response to the Governor's Position Statement, p.7 ¶ 48. | Attorney General's Position Statement, p. 4, ¶ 16, and p. 5, ¶ 18. | Section 60(d) of the Constitution: the Governor is responsible for the terms and conditions of service of |

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| | | | Transcript of hearing, day 16: Attorney General, pp. 42-44. | persons holding or acting in public offices. |
| | <ul style="list-style-type: none"> Record keeping is a matter for the Governor, and is in a parlous state | Elected Government's Response to the Governor's Position Statement, p.6 ¶ 38. | | Records Management Procedures Manual for the Virgin Islands Public Service, 2007 |
| | <ul style="list-style-type: none"> No proposal for the desperately needed transformation of the public service was forthcoming from successive Governors and Deputy Governors until late 2017 | Elected Government's Response to the Governor's Position Statement, p.4 ¶ 27. | By way of example only, see General Orders, which are aged (1982) and outdated | Section 60 of the Constitution: the Governor is responsible for the terms and conditions of service of persons holding or acting in public offices |
| The Auditor General | | | | |
| 5. | <p>The use of the following wording in the Auditor General's Report '<i>Covid 19 Stimulus Grants to Farmers and Fisherfolk (June 2021)</i>' was irresponsible, unwarranted and pejorative:</p> <p><i>"The funding requests were by farmers were inflated by the Ministry", and</i></p> <p><i>"as it related to falsifying the requests made by farmers".</i></p> | <p>Farmers and Fisheries Note, p. 16, ¶ 93.</p> <p>Farmers and Fisheries Note, p. 16, ¶ 95.</p> | Audit Report Covid 19 Stimulus Grants to Farmers and Fisherfolk (June 2021) | |
| 6. | <p>The Auditor General's Report '<i>Covid-19 Stimulus Grants to Religious Institutions, Civic Groups, Private Schools and Daycares Report (June 2021)</i>' exceeded the scope of the matters properly within the Auditor General's functions by stating:</p> <p><i>"the issuing of unsolicited and extravagant public grants to religious institutions presents a threat to the political independence of these entities".</i></p> | <p>Farmers and Fisheries Note, p. 22, ¶ 130.</p> <p>Farmers and Fisheries Note, p. 22-23, ¶ 134.</p> | Covid-19 Stimulus Grants to Religious Institutions, Civic Groups, Private Schools and Daycares Report (June 2021) | |

Honourable Dawn J Smith

The Attorney General

13 September 2021

**IN THE MATTER OF THE TERRITORY OF THE VIRGIN ISLANDS COMMISSION OF INQUIRY 2021
AND THE COMMISSION OF INQUIRY ACT (CAP 237)**

**SUBMISSIONS ON BEHALF OF THE GOVERNOR
ON SECTION 13 OF THE REGISTER OF INTERESTS ACT**

1. These submissions are made, at the request of the Commission of Inquiry, on behalf of the current Governor of the Virgin Islands, John J Rankin CMG ("the Governor") to address section 13 of the Register of Interests Act 2006 ("the Act") and the submissions made on behalf of the Attorney General on that section dated 29 October 2021 ("the AG's submissions").
2. The Governor understands the factual context behind the AG's submissions to be that:
 - a. the Registrar had, over a number of years, raised concerns by various means available to her (including formal reports that were ignored) about non-compliance by Members of the House of Assembly with their obligations to make declarations of interest under the Act;
 - b. in the context of flagging such concerns in general terms to the former Governor, and bearing in mind that the Registrar is appointed and may be removed from office by the Governor, the former Governor asked (orally) what was preventing her from fulfilling her role in ensuring compliance by all Members of the House of Assembly;
 - c. on 15 December 2020 the Registrar then provided to the former Governor a table setting out the non-compliant Members of the House of Assembly and some correspondence from her to non-compliant Members about their obligations under the Act.
3. It is necessary to have in mind (as the Registrar plainly did) the public interest in the maintenance of a register of interests and in compliance by Members with their undoubted obligations to make full and regular declarations of interests.
4. The Act was (as it says) to give effect to section 66C of the Virgin Islands Constitution Order 1976 (U.K.S.I. 1976 No. 2145) which was itself added by amendment under the Virgin Islands (Constitution) (Amendment) Order 2000. That section required the establishment and maintenance of a register of interests by a Registrar, and imposed a duty on all members of the Legislative Council (now the House of Assembly) (including Ministers) to declare such interests, assets, income and liabilities of that person and any other person connected with him, as may be prescribed by law. Such declarations were to be made on assuming the functions of office and at such intervals thereafter (being no longer than twelve months) as may also be prescribed by law. The public interest justification for such legislation and such a

register is obvious, as it is for the expectation of proper and regular compliance with the annual declaration obligation (which is reflected in section 3 of the Act).

5. As can be seen from the Registration Form at Schedule 1 to the Act, the expectation is that there will be declarations of directorships, remunerated employment/office/profession, clients, sponsorship, gifts/benefits/hospitality, overseas visits/benefits/gifts, land, shareholdings and any miscellaneous items falling within the purpose of the register. That purpose is defined at the outset of the form as being "*to provide information of any pecuniary interest or other material benefit which a Member receives or which might reasonably be thought by others to influence his or her actions, speeches or votes in the Legislative Council, or actions taken in his or her capacity as a Member*" (emphasis added, and again "House of Assembly" should now be substituted for "Legislative Council").
6. That is the best clarification of what is meant by "*information*" in section 13 of the Act, which is otherwise undefined, as section 4 of the Act determines that (aside from the names, offices and addresses of Members) the Register shall contain "*the details of the declarations made in accordance with this Act*". That is the "*information*" the Register should, therefore, contain and which therefore will come to the knowledge (peculiarly, given the non-open nature of the register) of the Registrar because of and in the course of performing her role.
7. Bearing that in mind, a table setting out non-compliant Members and correspondence from the Registrar to non-compliant Members about their obligations under the Act cannot possibly be "*information...relating to any declaration or matter in the Register*" (emphasis added). The non-compliance of members omitting to make a declaration is not required to be recorded in the Register under the Act (and therefore is not). Provision of such a table and correspondence to the former Governor cannot therefore be disclosure contrary to section 13(1)(b)(i) of the Act.
8. Nor is the knowledge of the Registrar of a member's non-compliance, or her correspondence in relation to it, "*information*" about any pecuniary interest or other material interest received by a Member, which is the "*information*" the Registrar is intended to and should receive in maintaining the register of interests. That is the information she may acquire about a Member and the Register through performance of her role which she is obligated not to disclose under section 13(1)(b)(ii). More general knowledge about non-compliance (rather than about declared interests) cannot be such information.
9. Reliance in the AG-s submissions on section 9 of the Act (concerning inspection of the Register) about the permitted exceptions to the requirement that the register shall not be open for inspection prove the point still more clearly. An inspection of the register would not reveal the table or correspondence provided by the Registrar to the former Governor. She was not opening up the Register to him, nor providing information about interests/declarations recorded in it or acquired about such interests/declarations by her in the course of or in relation to her duties.

10. The reading of the Act and of the Registrar's obligations and oath contained in the AG's submissions ignores the public interest and the wider context and terms of the Act set out above, which provide a clear understanding of the nature of the "information" referred to.
11. The wording of the Registrar's oath, properly considered, also makes clear that what she commits to keep confidential is "*all declarations and other information in connection with or relative to Members of the Legislative Council and the Register of Interests which has come to my knowledge in my capacity as Registrar of Interests*" (emphasis added). That conjunctive commitment can only properly be viewed in the context of the provision of information in declarations made by Members in accordance with the Act and the registration form and their inclusion in the register. If no declaration and registration of interests has been made by a Member, there is no information in connection with or relative to that Member and the Register of Interests which has come to her knowledge by virtue of her capacity as Registrar. There is therefore nothing about that (non-compliant) Member engaging the terms of her oath.
12. It is not in any event for the Governor nor the AG to determine whether the Registrar breached her statutory duty or her oath or committed an offence under section 13(3) of the Act. Those are matters for the DPP, should it come to that (which it is to be hoped it will not, as the motives of the Registrar in seeking to effect compliance with the registration obligations of Members cannot reasonably be impugned). It is also to be hoped that the DPP would in any event consider the actions of the Registrar in the context of the overriding public interest in Members complying with their obligations under the Act, which they had not, prompting her understandable frustration and action in informing the Governor of their non-compliance.
13. However, if it is considered that the legal position is not as set out in these submissions but rather as set out in the AG's submissions, or if it is considered that the legislative position is unclear then plainly a recommendation by the Commission for greater legislative clarity is justified, so as to ensure that the public interest in members making declarations of interest is upheld and that the Registrar is given effective means by which to raise and enforce non-compliance. Put shortly, if what the Registrar did was incorrect in the context set out above, then it should not be.
14. To that end, the Governor submits that good governance in the context of the register of interests and the Act is in fact best served by:
 - a. the definition and adoption of codes of good governance and of conduct in public office (this being absent from the Constitution, in contrast with those of other territories);
 - b. the creation, preservation and protection of fearlessly independent local institutions and public offices/officers (such as the Registrar) designated to police and enforce that code;

- c. Members in fact complying with their obligations to register and make declarations of their interests in accordance with the Act and acting in the public interest actively to police (as they have a right to do under the Act) those amongst their own number who do not comply with that obligation;
- d. providing expressly for alternative (and less drastic/cumbersome) means by which the Registrar might raise concerns about non-compliance with an independent body, other public officer, or the Governor;
- e. if necessary, clarification and amendment of the Act, and of the powers and obligations of the Registrar (and perhaps also of the Governor) so as to improve the prospects of good governance and good conduct in public office and to protect the public interest in the maintenance of the register of interests; and
- f. making public the register of interests (as the Premier previously committed to do on behalf of the Territory in his letter of 18 June 2019 to the Director of the Overseas Territories Directorate) and publishing any non-compliance by Members with their obligations under the Act.

ALEX HALL TAYLOR QC

Counsel for the Governor

John J Rankin CMG

Carey Olsen (BVI) LP

19 November 2021

Our ref: nzo/ln78034/0007/nzo
Your ref:

withers BVI

Little Denmark, PO Box 145
Road Town, Tortola VG1110
British Virgin Islands
t: +1 284 494 4949
www.withersworldwide.com

17 June 2021

The Rt Hon Sir Gary Hickinbottom
Commissioner of the BVI Commission of Inquiry
Rom RB 1.11
22 Whitehall
London SW1A 2EG

By email

Dear Sir Gary

BVI Commission of Inquiry ('COI') – Deputy Premier Hon Natalio D Wheatley – Hearing 16 June 2021

We refer to the hearing on 16 June 2021 with regard to the Declarations of Interest made by the Hon Natalio D Wheatley pursuant to the Register of Interests Act 2006 (as amended).

We are authorised by the Attorney General to confirm on behalf of the Hon Natalio D Wheatley that he accepts that the date of filing of his Declaration of Interests for 2021, namely 13 June 2021, fell outside the period of three months from the date on which it was due, being 12 March 2021, by one day.

Yours faithfully



Withers BVI

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LN78034/0007-EU-34067326/1

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**IN THE MATTER OF THE TERRITORY OF THE VIRGIN ISLANDS COMMISSION OF INQUIRY 2021
AND THE COMMISSION OF INQUIRY ACT (CAP 237) ("the Act")**

Submissions regarding the meaning of sections 66 and 67 of the Constitution Order, 2007

1. These submissions have been prepared on behalf of the Attorney General in response to the letter from the Commission dated 3 September 2021 (the 'Letter'). The Commission has requested that the Attorney General address the meaning and effect of sections 66 and 67 of the Constitution.
2. The specific questions raised by the Commission are addressed in turn below. Where issues in the questions appear duplicative or overlap substantially, they have been addressed together where possible. References to the accompanying bundle are given by Tab and page number as follows [Tab/Page].

Question 1 (a) to (f)

3. Question 1(a) to (f) relate to section 66(1)(f) of the Virgin Islands Constitution 2007 (the 'Constitution') [7/121d] which, for ease of reference, is in the following terms:

'No person shall be qualified to be elected as a member of the House of Assembly who... 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.'

(a) What is a contract for the purposes of section 66(1)(f)

4. The Constitution does not contain any specific definition of the term 'contract' which would apply to the scope of the obligation for candidates to publish notification of contracts with the Government.
5. The term should therefore be given its natural and ordinary meaning. Although there are competing definitions of contract (see, for example, Chitty on Contracts, 33rd Ed, para 0-019 et seq [6/106-113]), as a matter of BVI common law (which is in substance the same as to the law of England and Wales and that of other common law jurisdictions) it is generally accepted that a contract is a legally binding and enforceable agreement. For present purposes, a convenient definition can be found in the decision of the Jamaican Court of Appeal in *Garvey v Richards* 2011 JMCA Civ 16, at paragraph 10 of the judgment [5/96-97]:

"Generally, three basic rules underpin the formation of a contract, namely, an agreement, an intention to enter into the contractual relationship and consideration. For a contract to be valid and enforceable all essential terms governing the relationship of the parties must be incorporated therein. The subject matter must be certain. There must be positive evidence that a contractual obligation, born out of an oral or written agreement, is in existence".

6. A purchase or work order, strictly understood, is an offer to buy goods and services from a supplier and is not, by itself, a contract. However, a contract may be formed upon the acceptance of a purchase or work order and it is noted that, pursuant to regulation 72(2)(a) and 189(4) of the Public Finance Management Regulations 2005 (the "PFMR") [8/123 & 125], a purchase or work order may be used to

make or authorise a payment. A purchase or work order from the Government of the Virgin Islands which has been accepted by the supplier may, therefore, fall within the scope of the reporting obligation under section 66(1)(f) of the Constitution.

7. A 'petty contract' (i.e. a contract of a value of lower than US\$100,000 – see regulation 181 PFMR, as amended by the Public Finance (Amendment) Regulations 2007) [8/123a & 9/126] is a contract for the purposes of section 66 (1)(f) of the Constitution.

(b) What is meant by 'Government of the Virgin Islands' and (c) What is meant by 'for and on behalf of the public service'

8. The Government of the Virgin Islands is the system or group of persons established and empowered pursuant to the Constitution to provide for the government of the Virgin Islands. The Government of the Virgin Islands comprises the Governor, acting on behalf of Her Majesty the Queen, the Executive, the Legislature, the Judicature and the Public Service.
9. The Governor's responsibility for the conduct of business of the Government of the Virgin Islands, is referred to in section 60 (1) of the Constitution. It includes the administration of "*any department of government with respect to the following matters – (a) external affairs.... (b) defence....(c) internal security.....(d) the terms and conditions of service of persons holding or acting in public offices.....; and (e) the administration of the courts*" [7/121a].
10. The Executive plainly includes Cabinet (see section 47 of the Constitution [7/117]) and Ministers acting in their ministerial capacity. Section 56(1) of the Constitution provides as follows [7/120]:

"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."

11. A contract could fall within the definition of section 66(1)(f) if any single organ (or department) of the Government were a party to it - for example if, on the Government's side of the transaction, the contracting party were a specific Minister.
12. However, this is subject to the qualification that in order for the contract to fall within section 66(1)(f), the relevant candidate must be contracting with a person who is acting "*for and on behalf of the public service*" (i.e. 'for or on behalf of the Crown' – see the definition of public service in section 2(1) of the Constitution, which provides that it means "*the service of the Crown in a civil capacity in respect of the Government of the Virgin Islands*" [7/115]). For example, a contract with an individual who is Minister in the Government, but who is acting in a purely private capacity and not on behalf of the Crown, would not fall within section 66(1)(f).

(d) What is meant by "party", "partner in a firm" and "director or manager" and "company"?

13. Section 66(1)(f) applies to contracts to which the relevant candidate is a party. A party to a contract is a person who has rights and/or obligations under the contract, who is legally entitled to enforce the agreement and against whom the contract may be enforced.
14. In addition, section 66(1)(f) applies where a party to the contract is a firm or company of which the candidate is a partner or director respectively. To the extent that the plain meaning of 'company', 'director', or 'partner' is unclear in this context, the Attorney General adopts the following definitions.

- a. As to a company, section 3(1) of the BVI Business Companies Act 2004 ('BCA') as amended, provides, in general, as follows [10/142-143];

“company” means (a) a BVI business company incorporated under section 7, (b) a company continued as a BVI business company under section 182, or (c) a former Act company re-registered as a BVI business company under Schedule 2, but excludes a dissolved company and a company that has continued as a company incorporated under the laws of a jurisdiction outside the Virgin Islands in accordance with section 184”.

- b. As to director, section 2 of the BCA provides that it includes “*in relation to a company, a foreign company and any other body corporate,a person occupying or acting in the position of director by whatever name called*” [10/140].
- c. As to partner, section 2 of the Limited Partnership Act 2017 provides that “*partner*” means a general partner or a limited partner in a Limited Partnership [11/204].

(e) What details does the person have to set out in a notice so that the electorate can properly understand, 'the nature of such contract and his or her interest in it, or the interest of such firm or company, in it'?

15. From the researches we have been able to undertake this question does not appear to have been the subject of any previous judicial interpretation. Further, there is no prescribed form for a subsection 66(1)(f) Notice.
16. However, it is submitted that a Notice where applicable, ought to indicate what the contract is for and the interest that the candidate or their firm or company has in it.

(f) If the person seeking election has a contract with a statutory body/board and /or any public authority not considered part of the Government of the Virgin Islands, then does section 66(f) require disclosure by notice?

17. Section 66(1)(f) applies only to contracts with the Government of the Virgin Islands “*for and on account of the public service*”. On a natural construction it would not apply to a contract with an entity which is 'not considered part of the Government of the Virgin Islands'.
18. Section 66(1)(f) does not refer to contracts with a 'public authority'.
19. In the Virgin Islands, for the purposes of section 66(1)(f), there is a distinction to be made between the Crown or Government acting for and on account of the public service and a statutory body or board or public authority more broadly defined.
- (a) Section 2(1) of the Constitution defines the public service as “*the service of the Crown in a civil capacity in respect of the Government of the Virgin Islands*” [7/115].
- (b) There is clear authority that, in general, the Crown and a statutory body are separate and distinct entities, unless the statute by which they were created specifies otherwise: see *Tamlin v Hannaford* (1950) 1 K.B. 18, per Denning LJ at pp 23 to 25 [1/6-8], *Perch et al v Attorney General of Trinidad and Tobago* [2003] 2 WLUK 591, per Lord Bingham of Cornhill at [13] and [15] [2/17--20] and *Attorney General of Trinidad and Tobago v Smith* [2009] UKPC 50 per Lord Walker [16] and [24] [4/89 & 92]. This is the case even if the statutory body is subject to a substantial degree of government control: see *Perch et al*, per Lord Bingham at [13] [2/17-18].

- (c) In Chapter 2 of the Constitution, which deals with fundamental rights and freedoms, subsection 26(b) defines a public authority as “*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*”. Therefore, in that context, ‘public authority’ in the Virgin Islands appears to include a statutory body, as it does under the United Kingdom Human Rights Act 1998, for the purposes of which the phrase is widely construed: see *Parochial Church Council of the Parish of Aston Cantlow and Wilmcote with Billesley, Warwickshire (Appellants) v Wallbank and another* (Respondents) 2003 UKHL 37; [2004] 1 A.C. 546, per Lord Nicholls of Birkenhead p.553H to 554D & G-H [5]-[7] & [9] [3/29-30]; see also the discussion in *Attorney General v Smith* [2009] UKPC 17, per Lord Walker at [17] [4/89-90].
 - (d) In the context of the State’s liability for the breach of fundamental rights and freedoms, a ‘public authority’ also includes the Crown: see *Aston Cantlow* per Lord Nicholls at p.554B-C [7] [3/30].
 - (e) However, it does not follow that the Crown, in this instance the Government of the Virgin Islands, acting “*for or on account of the public service*” includes a statutory body or extends wider than the definition given in section 2(1) of the Constitution. In his speech in *Aston Cantlow*, Lord Nicholls appears to maintain the distinction between the discharge of “*functions of a governmental nature*” by governmental and non-governmental bodies, even though both of types of body were capable of falling within the definition of public authority for the purposes of the broad construction applied in the Human Rights Act context: see p.554G-H [9] [3/30] and p.555D-E [12] [3/31].
20. Accordingly, it is submitted that contracts with a statutory body or some other non-governmental public authority would not fall within the provisions of section 66(1)(f) of the Constitution, pursuant to which such entities cannot be equated with the Government of the Virgin Islands acting “*for and on behalf of the public service*”.

Question 2: As a matter of law, what is the purpose or intention behind section 67(3)(d) insofar as it relates section 66(1)(f). In particular, does it follow that failure to comply with section 66(f) would not require an elected member of the House of Assembly either to declare such failure or to vacate his or her seat.

21. Section 67(3)(d) provides as follows:

An elected member of the House of Assembly shall also vacate his or her seat in the House... 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) [7/121e]

22. It follows from the plain language of the provision, in particular the phrase “*other than paragraph (f)*” that a member would not be required to vacate his seat by virtue of a failure to make a declaration under section 66(1)(f). Nor does the Constitution provide for declaration of such a failure.

Question 3: (a) to (e)

23. Question 3(a)-(e) relates to section 67(3)(e), pursuant to which (for ease of reference):

An elected member of the House of Assembly shall also vacate his or her seat in the House... 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. [7/121e]

24. Section 67(3)(e) provides that, subject to subsection 67(7), a member shall vacate his or her seat if the prescribed circumstances arise.
25. Questions 3(a)-(e) repeat the same questions of construction as set out in questions 1(a), (c), (d) and (f) above. It is submitted the relevant terms have the same meaning and effect where they appear in section 66(1)(f) as they do where they appear in section 67(3)(e).

Questions 4 and 5 : As a matter of law, what is the purpose or intention behind section 67(7) and the operation of Section 67(7)?

26. For ease of reference, section 67(7) provides that:

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. [7/121e]

27. This section provides a mechanism for an exemption, in appropriate cases (i.e. where it 'appears just'), to the rule which would require a member of the House of Assembly to vacate his or her seat upon becoming party to or interested in a contract with the Government of the Virgin Islands, provided that the relevant member has disclosed his interest in the contract as soon as practicable.
28. The phrase "*before becoming party to such a contract*" bears its ordinary and natural meaning. What is practicable will necessarily depend on the schedule of the sitting on the House of Assembly and the circumstances of the particular case. As to what ought to be disclosed, we have already made submissions at paragraphs 15 and 16 (above) as to the requirements under section 66(1)(f), which contains the same wording in its final phrase.
29. The effect of the rule assists with stability of tenure in the House of Assembly and ensures that a person does not have to vacate office simply by virtue of contracting with the Government of the Virgin Islands. Without an exception of this nature, there would be obvious practical difficulties, particularly in a jurisdiction such as the Virgin Islands, where because of the population size, there is a relatively small pool of potential candidates for elected office. Any such candidates who have significant business interests and experience (characteristics which may be attractive to the electorate) may be unwilling to seek or remain in elected office if to do so would exclude them from being able to compete for government business.

**Withers BVI
13 September 2021**

Introduction

We have been asked to respond to the following questions:

(1) As a matter of law, what does section 66(f) of the Constitution require a person seeking to be elected as a member of the House of Assembly to disclose in a public notice. In particular:

(a) What is meant by “contract”? Does it include work orders, purchase orders and petty contracts; and, if not, why not?

(b) What is meant by “Government of the Virgin Islands”?

(c) What is meant by “for or on account of the public service”?

(d) What is meant by “party”, “partner in a firm” and “director or manager” and “company”?

(e) What details does the person have to set out in a notice so that the electorate can properly understand, “the nature of such contract and his or her interest in it, or the interest of such firm or company, in it”?

(f) If the person seeking election has a contract with a statutory body/board and /or any public authority not considered part of the Government of the Virgin Islands, then does section 66(f) require disclosure by notice.

(2) As a matter of law, what is the purpose or intention behind section 67(3)(d) insofar as it relates section 66(1)(f). In particular, does it follow that failure to comply with section 66(f) would not require an elected member of the House of Assembly either to declare such failure or to vacate his or her seat.

(3) As a matter of law, what is the consequence to an elected member of the House who comes within the scope of section 67(3)(e)? In particular and having regard to the scope of this provision:

(a) What is meant by “contract”? Does it include work orders, purchase orders and petty contract and, if not, why not?

(b) What is meant by “Government of the Virgin Islands”?

(c) What is meant by “for or on account of the public service”?

(d) What is meant by “party”, “partner in a firm” and “director or manager” and “company”?

(e) If the contract is with a statutory body/board and /or any public authority not considered part of the Government of the Virgin Islands, then does it come within the scope of this provision.

(4) As a matter of law, what is the purpose or intention behind section 67(7)?

(5) As to the operation of section 67(7):

(a) What is meant by: "... before becoming a party to such contract ..."

(b) What is meant by: "...before or as soon as practicable after becoming otherwise interested in such contract (whether as a partner in firm or director or manager of a company)"?

(c) What is the member required to disclose to the House of Assembly so that it has sufficient understanding of "...the nature of such contract and his or her interest or the interest of any such firm or company in it."

However, before we attempt to answer these questions that require us to define statutory terms, words and phrases, it must be established that there are six principal rules of statutory interpretation. They are as follows:

- i. An Act must be construed as a whole, so that internal inconsistencies are avoided.
- ii. Words that are reasonably capable of only one meaning must be given that meaning whatever the result. This is the literal rule.
- iii. Ordinary words must be given their ordinary meanings and technical words their technical meanings unless absurdity would result. This is the golden rule.
- iv. When an Act aims at curing a defect in the law any ambiguity is to be resolved in such a way as to favor that aim. This is the mischief rule.
- v. When a list of specific items belonging to the same class is followed by the general words, the general words are to be treated as confined to other items of the same class. This is the ejusdem generis rule (of the same kind).
- vi. When a list of specific items is not followed by general words it is to be taken as exhaustive. This is the expression *unius est exclusion alterius* rule (the inclusion of the one is the exclusion of the other).

"Furthermore, the House of Lords has ruled against the existence of an alleged social policy rule, which would enable an ambiguous Act to be interpreted so as to best give effect to the social policy underlying it, and it is well established that ambiguities may not be resolved by looking at external matters, such as explanations of a proposed Act contained in a White Paper or given by ministers during its passage through Parliament.

There are some general presumptions relating to the interpretation of statutes. They are presumed (1) not to bind the Crown; (2) not to operate retrospectively so far as to

substantive (but not procedural) law is concerned; (3) not to interfere with vested rights (particularly without compensation); (4) not to oust the jurisdiction of the courts; and (5) not to derogate from constitutional rights or international law. But clear words or necessary implication may override these presumptions. A consolidating statute is presumed not to be intended to alter the law, but this does not apply to codifying statutes, which may be concerned with clarifying law that was previously unclear. Penal and taxing statutes are subject to strict construction, i.e., if after applying the normal rules of interpretation it is still doubtful whether or not a penalty or tax attaches to a particular person or transaction, the ambiguity must be resolved in favor of the subject. “

Extracted from Oxford Reference “A Concise Dictionary of Law”

In light of this, our responses to the questions posed are likely to involve more than one rule of interpretation.

Responses

(1) As a matter of law, what does section 66(f) of the Constitution require a person seeking to be elected as a member of the House of Assembly to disclose in a public notice...

Any person seeking to be elected as a member of the House of Assembly is under a legal obligation to disclose/declare any contractual agreement that they have made with the Government of the Virgin Islands.

In particular: (a) What is meant by “contract”? Does it include work orders, purchase orders and petty contracts; and, if not, why not?

Under section 66(f) of the Constitution, the term “contract” maintains its ordinary legal meaning. A contract is a mutually beneficial agreement between parties that is enforceable in a court of law. This of course subject to interpretation.

Petty contracts are indeed contracts under section 66(f) as they contain the basic contractual elements. Individuals and/or businesses seeking petty contracts must provide a proposal to the relevant government department. This constitutes their offer. When their proposal is accepted the acceptance component of a contract is then satisfied. Consideration is given as the individual or business will be providing the government with goods and/or services for which they will be

paid (by the government). Most importantly, individuals and/or business which seek petty contracts intent to be bound by the terms of the petty contract. The same position is held by the government. Petty contracts include the intention to create legal relations. Therefore, it follows that both the government and the individual or business that is awarded the petty contract has the capacity to take legal action if the other party does not fulfill their obligations.

However, purchase orders and work orders are not contracts by themselves because they lack a key contractual element. When the Government of the Virgin Islands seeks to obtain goods, using a purchase order, and/or services, using work orders, from an individual and/or business they do not intend to create legal relations. The individual and/or business is not bound by the purchase order or work order. And so, purchase orders and work orders are matters that can be substantially dealt with under the Sale of Goods Act (cap. 298).

(b) What is meant by “Government of the Virgin Islands”?

The term “Government of the Virgin Islands” refers to the Legislature, Executive, Judiciary and government departments. Government departments can be described as organs of central government which are responsible for a particular aspect of public administration (e.g., Immigration Department, Department of Labour and Workforce, and the Treasury).

(c) What is meant by “for or on account of the public service”?

If a literal interpretation is applied, the phrase “for or on account of the public service” means anything done on behalf of the public service and for the benefit of the public service.

(d) What is meant by “party”, “partner in a firm” and “director or manager” and “company”?

The following terms are defined by a wide gambit of company law, but can simplistically be considered as:

- a. The term “party”: any individual, business, establishment or organization that is required to uphold the terms of a contract.
- b. The term “partner in a firm”: to any individual who owns shares or has stake in a firm.
- c. The term “director or manager”: to an individual who is responsible for the day-to-day operations of a business, establishment or organization.

- d. The term “company”: any trading business that has been incorporated in the British Virgin Islands.

(e) What details does the person have to set out in a notice so that the electorate can properly understand, “the nature of such contract and his or her interest in it, or the interest of such firm or company, in it”?

The statute is silent on this issue and has indeed been the cause of much confusion as demonstrated by the evidence presented, by the various elected members, to the Commission of Inquiry. Therefore, the provision is in need of clarification in order to prevent omissions from being made.

(f) If the person seeking election has a contract with a statutory body/board and /or any public authority not considered part of the Government of the Virgin Islands, then does section 66(f) require disclosure by notice.

Section 66(f) requires a person seeking to be elected to the House of Assembly to give disclosure by notice when they have entered into contracts with the Government of the Virgin Islands. And so, it follows that an individual is not required to give disclosure by notice if they have entered into contracts with statutory boards/bodies, which are autonomous from government, and/or public authorities.

(2) As a matter of law, what is the purpose or intention behind section 67(3)(d) insofar as it relates section 66(1)(f). In particular, does it follow that failure to comply with section 66(f) would not require an elected member of the House of Assembly either to declare such failure or to vacate his or her seat.

Section 67 allows for an elected member of the House of Assembly to disclose their failure to comply with providing notice, under section 66(f), to the House. However, under section 67(7), the elected member is not required to vacate their seat. Once a disclosure is made to the House, the House has the authority to exempt the elected member.

(3) As a matter of law, what is the consequence to an elected member of the House who comes within the scope of section 67(3)(e)?...

An elected member who falls within the scope of section 67(3)(e), is required to vacate their seat unless they have been exempted by the House of Assembly.

In particular and having regard to the scope of this provision: (a) What is meant by “contract”? Does it include work orders, purchase orders and petty contract and, if not, why not?

The response to Question 1(a) is repeated.

(b) What is meant by “Government of the Virgin Islands”?

The response to Question 1(b) is repeated.

(c) What is meant by “for or on account of the public service”?

The response to Question 1(c) is repeated.

(d) What is meant by “party”, “partner in a firm” and “director or manager” and “company”?

The response to Question 1(d) is repeated.

(e) If the contract is with a statutory body/board and /or any public authority not considered part of the Government of the Virgin Islands, then does it come within the scope of this provision.

Contracts with statutory bodies/boards and/or public authorities do not fall within the scope of 67(3)(e) because the section speaks to contracts entered into with the Government of the Virgin Islands and as previously stated, statutory bodies/boards are autonomous from government.

(4) As a matter of law, what is the purpose or intention behind section 67(7)?

As these provisions are open to various interpretations, there are instances where elected members may have unknowingly failed to comply with section 66(f). Section 67(7) was intended to be used as a mechanism to prevent elected members of the House from having to vacate their seat, when they have been honest and transparent to the House, after they become aware that they have failed to comply with section 66(f).

(5) As to the operation of section 67(7):

(a) What is meant by: “... before becoming a party to such contract ...”

The phrase “before becoming a party to such contract” refers to the period before the contract is entered into legally. However, if the party is not involved in the day-to-day running of the company, it can only be reasonable that this must relate to the time at which he becomes aware of the contract. One should not be faulted for omissions unknown to him.

(b) What is meant by: “...before or as soon as practicable after becoming otherwise interested in such contract (whether as a partner in firm or director or manager of a company) ”?

The phrase “before or as soon as practicable after becoming otherwise interested in such contract (whether as a partner in firm or director or manager of a company)” means prior to a proposal being made to the Government of the Virgin Islands, or in cases where the elected member is not responsible for engaging the company in contracts, when that member is informed that a proposal has been made or is about to be made to the Government of the Virgin Islands.

In regard to what is considered as soon as practicable, this is determined on a subjective basis.

(c) What is the member required to disclose to the House of Assembly so that it has sufficient understanding of “...the nature of such contract and his or her interest or the interest of any such firm or company in it.”

Here again, the statute is silent on this issue and has indeed been the cause of much confusion as demonstrated by the evidence presented, by the various elected members, to the Commission of Inquiry. Hence, this is another provision that requires clarification in order to prevent omissions from being made.

Conclusion

As mentioned above, there are six different ways to interpret statutes. In light of this, one cannot expect members of the House who are not lawyers but, who are instead “laymen” and untrained in the niceties of the law, and in this particular case Hon. Neville Smith a newly elected member of the legislature, to be able to determine which interpretation applies to each provision.

We trust that this has been of aid to the Commission.

Silk Legal

Affidavit of the Hon. Neville Smith

Commission of Inquiry

16 August 2021

I, the Honourable Neville Smith, MHA of East End, Tortola, BVI **MAKE OATH** and **SAY**:

1. I make this affidavit on the request of the Commission of Inquiry (the “COI”).
2. On July 27th, 2021 my lawyers received a letter (the “Letter”) from the COI stating the following:
*“It is noted that your client has entered into the following contracts (“the Contracts”) with the BVIG:
i) Caribbean Security Limited;
ii) NS Cleaning and Imports; and
iii) Frontline.”*
3. The above are not contracts, they are names of companies/businesses that I have an interest in, either as owner, shareholder and/or director.
4. The Letter requested the following:
*“1. An explanation as to how the Contracts were awarded, including the underlying papers that led to the Contracts being awarded;
2. Confirmation as to whether any of the Contracts were subject to a section 67 exemption and for your client to provide copies of the same;
3. If the answer to question 2 is in the negative in relation to any of the Contracts, an explanation as to why the s67 exemption did not apply.”*
5. With respect to the Letter’s first request, the term defined as Contracts within the Letter are not contracts, but with respect to the evidence that I provided, I am unsure as to how contracts or purchase orders were awarded, that is a question best put to the entities to whom they relate as they alone would be able to inform the COI as to their contract making processes and the procedure they use for issuing purchase orders.
6. Within the evidence provided, there were a few contracts with the central government, for which I have obtained a section 67 exemption.
7. It should be noted that a number of the invoices in the evidence provided arose out of purchase orders rather than contracts.
8. I recall that I had approached the Clerk of the House of Assembly in relation to a number of these purchase orders and/or contracts along with the former Attorney General, both of whom advised me, verbally, that there was need to bring these matters before the House of Assembly.

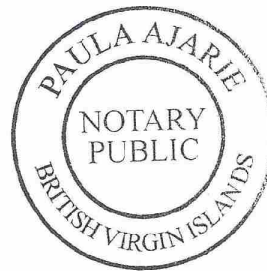
9. I have not played an active role in the day-to-day management of the businesses/companies aforesaid for a few years, as I had a full time job previous to my election, and now I am an elected member of the House of Assembly. However, I do know that the businesses/companies had a business relationship with the government prior to my election.

10. As what seems to be the second request is answered in the affirmative, there is no need to answer the third request, which in any event would be a matter for legal submissions.

SWORN by the Honourable Neville Smith
at Road Town, Tortola, BVI }
This 16th day of August 2021 }
Before me: }


Honourable Neville Smith, MHA

 }
Commissioner of Oaths/Notary Public



THE HOUSE OF ASSEMBLY OF THE VIRGIN ISLANDS

RESOLUTION NO. 10 OF 2021

[Gazetted 12th August, 2021]

WHEREAS section 67(3)(e) of the Virgin Islands Constitution Order, 2007 (U.K.S.I. 2007 No. 1678) provides that subject to subsection (7), an elected member of the House of Assembly shall vacate his or her seat if the member becomes a party to a contract with the Government of the Virgin Islands for or on account of the public service, or if any firm in which the member is or becomes a partner, or a company of which the member is or becomes a director or manager becomes a party to a contract with the Government of the Virgin Islands;

WHEREAS section 67(7) provides that if in the circumstances it appears just to do so, the House of Assembly may exempt an elected member from vacating his or her seat under subsection (3)(e) if the member, before becoming a party to a contract, or before or as soon as practicable after becoming interested in a contract with the Government of the Virgin Islands by virtue of being a partner in a firm or director or manager in a company which has a contract with the Government, discloses to the House of Assembly the nature of the contract and his or her interest in the firm or company involved in the contract;

WHEREAS the Honourable Neville Smith, is an elected member of the House of Assembly;

WHEREAS the Honourable Neville Smith is a Director of Caribbean Security Limited whose registered office address is located at Craigmuir Chambers, Road Town, Tortola, British Virgin Islands and, which company provides security services and related systems installation;

WHEREAS the Government of the Virgin Islands, through the Ministry of Finance, entered into a contract with the Company on the 8th day of April, 2021 to provide services for the installation of access control, video surveillance and burglar alarm in the Department of Information Technology/Telephone Services Management, Inland Revenue and Treasury Departments and for additional installation including building wild fire system at relocation offices located at Skelton Bay Lots, Fish Bay, Tortola, British Virgin Islands for a total contract sum of seventy two thousand nine hundred and seventeen dollars and fifty six cents (\$72,917.56);

WHEREAS by virtue of being a Director of Caribbean Security Limited, the Honourable member has an interest in the contract with the Company as aforesaid;

WHEREAS this Resolution discloses to the House of Assembly the contract signed with the Government of the Virgin Islands and the interest of the Honourable member in the contract by virtue of being a Director of the Company;

WHEREAS this Resolution is a request by the Honourable member to the House of Assembly to exempt the Honourable member from vacating the House of Assembly;

AND WHEREAS the Honourable **ANDREW A. FAHIE**, the Premier and Minister of Finance has by motion moved the House of Assembly to exempt the Honourable Neville Smith from vacating his seat as an elected member of the House of Assembly;

NOW THEREFORE, BE IT RESOLVED that the House of Assembly of the Virgin Islands exempts the Honourable Neville Smith from vacating his seat as an elected member of the House of Assembly.

Passed by the House of Assembly this 29th day of July, 2021.

(Sgd.) Julian Willock,
Speaker.

(Sgd.) Phyllis Evans,
Clerk of the House of Assembly.

THE HOUSE OF ASSEMBLY OF THE VIRGIN ISLANDS

RESOLUTION NO. 11 OF 2021

[Gazetted 12th August, 2021]

WHEREAS section 67(3)(e) of the Virgin Islands Constitution Order, 2007 (U.K.S.I. 2007 No. 1678) provides that subject to subsection (7), an elected member of the House of Assembly shall vacate his or her seat if the member becomes a party to a contract with the Government of the Virgin Islands for or on account of the public service, or if any firm in which the member is or becomes a partner, or a company of which the member is or becomes a director or manager becomes a party to a contract with the Government of the Virgin Islands;

WHEREAS section 67(7) provides that if in the circumstances it appears just to do so, the House of Assembly may exempt an elected member from vacating his or her seat under subsection (3)(e) if the member, before becoming a party to a contract, or before or as soon as practicable after becoming interested in a contract with the Government of the Virgin Islands by virtue of being a partner in a firm or director or manager in a company which has a contract with the Government, discloses to the House of Assembly the nature of the contract and his or her interest in the firm or company involved in the contract;

WHEREAS the Honourable Neville Smith, is an elected member of the House of Assembly;

WHEREAS the Honourable Neville Smith is a Director of Caribbean Security Limited whose registered office is located at Craigmuir Chambers, Road Town, Tortola, British Virgin Islands and, which company provides Security services and related systems Installation;

WHEREAS the Government of the Virgin Islands, through the Ministry of Finance, entered into a contract with the Company on the 26th day of November, 2020 to provide services for the installation of ICT equipment for the Royal Virgin Islands Police Force at identified locations in Tortola, British Virgin Islands for a total contract sum of ninety nine thousand two hundred and eighty five dollars (US \$99,285.00);

WHEREAS by virtue of being a Director of Caribbean Security Limited, the Honourable member has an interest in the contract with the Company as aforesaid;

WHEREAS this Resolution discloses to the House of Assembly the contract signed with the Government of the Virgin Islands and the interest of the Honourable member in the contract by virtue of being a Director of the Company;

WHEREAS this Resolution is a request by the Honourable member to the House of Assembly to exempt the Honourable member from vacating the House of Assembly;

AND WHEREAS the Honourable **ANDREW A. FAHIE**, the Premier and Minister of Finance has by motion moved the House of Assembly to exempt the Honourable Neville Smith from vacating his seat as an elected member of the House of Assembly;

NOW THEREFORE, BE IT RESOLVED that the House of Assembly of the Virgin Islands exempts the Honourable Neville Smith from vacating his seat as an elected member of the House of Assembly.

Passed by the House of Assembly this 29th day of July, 2021.

(Sgd.) Julian Willock,
Speaker.

(Sgd.) Phyllis Evans,
Clerk of the House of Assembly.

IN THE MATTER OF THE TERRITORY OF THE VIRGIN ISLANDS COMMISSION OF INQUIRY 2021
AND THE COMMISSION OF INQUIRY ACT (CAP 237)

SUBMISSIONS ON BEHALF OF THE ATTORNEY
GENERAL (Section 67 of the Constitution)

1. On 21 September 2021, the Commissioner raised for the first time with Leading Counsel, Sir Geoffrey Cox QC, a possible construction of Section 67(7) of the Constitution, which, contrary to longstanding practice and understanding in the Virgin Islands, would have prevented the House of Assembly from exempting a member from vacating his seat under Section 67(3)(e) *unless* he had given notice of a contract in which he was interested as a partner in a firm, or a director or manager of a company, *before* it had been entered into by that firm or company.
2. Since Counsel had not had the opportunity to consider the point previously, which did not feature in the questions of which the Commission had given notice, he proposed making further submissions in due course. Permission was given for those submissions to be made on Friday 1 October, and subsequently extended to 8 October 2021.
3. Section 67(7) of the Constitution provides:

(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.
4. The basis for that construction, as put to counsel, is understood to be as follows. The words, “before becoming a party to such contract as there described” are to be taken to

refer to the circumstances in which, under section 67(3) (e), a member is to be disqualified. Therefore, the words “after becoming otherwise interested” must refer to a means of becoming interested in a government contract *other than* those described in section 67(3) (e). If that is correct, only a member who becomes interested in a government contract in some other way than those described in section 67(3) (e) may avail himself of the right to seek exemption “*as soon as practicable*” afterwards.

5. The Attorney General submits that this is a strained construction of those constitutional provisions, which is not sustainable, and the interpretation of them, or their earlier and similar equivalents, adopted in the Virgin Islands, is the correct one for the following reasons:

- 6.

- i. The subordinate clause, “before becoming a party to such contract *as there described*” is not to be taken to refer to all the circumstances in which, under section 67(3) (e), a member is to be disqualified but, as it says, those in which he becomes *a party* to the contract.
- ii. Section 67(3)(e) does not provide that a member becomes *a party* to a relevant contract because he is a partner of a firm, or a director or manager of a company that enters such a contract.
- iii. That is unsurprising because in such circumstances he is *not* a party. Therefore, to suggest that the clause “before becoming *a party* to such a contract as there described” (i.e. as described in subsection (3)(e)) must be construed also to refer to the *interest* he possesses in a contract, *not as a party* but as a partner of a firm or a director or manager of a company which *is* a party, is not a sustainable construction.
- iv. The phrase “*as there described*” is not governed by the present participle, “becoming” (a party) but by the noun, “contract”. The contract “*as there described*” means a contract of the type described in the subsection (a contract with the government etc).

- v. Furthermore, subsection (7) applies expressly to exempt a member from vacating his seat *under ss (3)(e)*, but he is not obliged under that subsection to vacate his seat because he is interested in a relevant contract *in some other way* than is described in that subsection. It would make no sense to exempt him from disqualification for becoming interested in a way for which he is not liable to be disqualified.

- 7. It is submitted that disposes of the point.

Sir Geoffrey Cox QC
Counsel for the Attorney General

**Written Responses to the Warning Letter to Hon. Neville
Smith No.1 by the British Virgin Islands commission of
Inquiry**

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**Written Responses to the Warning Letter to Hon. Neville Smith No.1 by the British
Virgin Islands Commission of Inquiry**

Appendix A – Potential Criticism of Hon. Neville Smith - No.1

Reference is made to Resolution No. 10 of 2021 and Resolution No. 11 of 2021 passed by the House of Assembly on 29 July 2021 in relation to contracts entered into by Caribbean Security Limited, of which I am a director, dated 8 April 2021 and 26 November 2020 to provide services to the Department of Information Technology/ Telephone Services Management, Inland Revenue, Treasury Department and the Royal Virgin Islands Police Force.

We note the potential criticism made by the Commission of Inquiry that the section 67 exemption from vacating his seat as an elected member of the House of Assembly on 29 July 2021 was contrary to and/or was in breach of section 67 of the Constitution.

We further note that the COI has made the potential criticism that Hon. Neville Smith has acted inconsistently with the principles of good governance and that corruption, abuse of office or serious dishonesty may have taken place.

As a response to the above, I, Neville Smith, wholeheartedly refute the criticisms made. Although I am a director of Caribbean Security Limited, I am not involved in the day to day operations of the Company and have not personally engaged or entered into any contracts (noted in the Warning Letter) on behalf of the Company. My business partner, David Dupree, who lives in the United States of America, runs the daily operations of the Company as set out in his Letter dated 8 September 2021 annexed as Annex A to this written response.

My role as director of the Company has been limited for over 10 years to occasionally signing cheques and making deposits on behalf of the Company in instances when my business partner was unable to do so. As a result of such, I am not in correspondence with any clients, that being Government departments or individuals, with respect to the

services provided by Caribbean Security Limited. Furthermore, I am not provided with copies of contracts or notification of each contract to be entered into by Caribbean Security Limited.

I have been honest and transparent by declaring my interests and role in the Companies of which I am a director in instances where services have been provided to Government departments. Evidence of such has been displayed in my last hearing with the COI where we reviewed the declaration of interests completed and submitted within the relevant statutory deadlines. Further, the contract dated 26 November 2020 went through a tender procurement process and the instructions from the Government of the Virgin Islands have been attached as Annex B to these written resolutions for your attention.

As soon as I am made aware of any contracts entered into by Caribbean Security Limited for services which may range from the installation of security equipment to the maintenance and repairs of the security systems previously installed by the Company with Government Departments I make the relevant declarations, seek consultation or legal advice from the Attorney General and request a Resolution and motion in accordance with section 67(7) of the Constitution.

I have requested a Resolution and motion from the Clerk and the Speaker of the House for an exemption on contracts entered into by Caribbean Security Limited with Government Departments as soon as was reasonably practicable. There are scheduled matters which take precedence and the timing of the motion before the House of Assembly is outside of the scope of my control. I have herewith attached evidence from the Speaker of the House as Annex C to these written responses confirming that I have made several attempts to have these matters dealt with the House as soon as practicable. Further, the clerk has indicated that she would be willing to be a witness to confirm same if required.

I have acted in accordance with the principles of good governance. I am not corrupt nor have I abused my office. I have acted honestly and in accordance with section 67(7) of the Constitution by requesting a motion for an exemption as soon as was practicable to do so after being made aware of the Company's interest in the contracts dated 26 November 2020 and 8 April 2021 with the relevant Government Departments.

Appendix A – Potential Criticism of Hon. Neville Smith - No.2

Reference is made to a contract entered into by Caribbean Security Limited, of which I am a director, dated 6 December 2019 to provide security services to the Royal Virgin Islands Police Force.

We note the potential criticism made by the Commission of Inquiry that a section 67 exemption from vacating his seat as an elected member of the House of Assembly was not obtained and was therefore contrary to and/or in breach of section 67 of the Constitution.

We further note that the COI has made the potential criticism that Hon. Neville Smith has acted inconsistently with the principles of good governance and that corruption, abuse of office or serious dishonesty may have taken place.

As a response to the above, I, Neville Smith, wholeheartedly refute the criticism made above. As I've noted previously, although I am a director of Caribbean Security Limited, I am not involved in the day to day operations of the Company and have not personally engaged or entered into any contracts (noted in the Warning Letter) on behalf of the Company. My business partner, David Dupree, runs the daily operations of the Company as set out in his signed and notarized letter dated 8 September 2021 annexed as Annex A to this written response.

My role as director of the Company has been limited to occasionally signing cheques and making deposits on behalf of the Company in instances when my business partner was unable to do so. As a result of such, I am not party to nor am I provided with copies of contracts being entered into by Caribbean Security Limited.

Unfortunately, as I am not involved in the daily operations of the Company it appears that this contract fell through the cracks and I was not notified of the contract dated 6 December 2019 entered into by the Company until recently. Upon receipt of the invoices and receipts from my business partner to provide to the COI, I further inquired with my business partner on the contract referred to on the invoice to the Royal Virgin Islands Police Force. I have recently received confirmation on the existence of the

contract dated 6 December 2019 and as such I have since made arrangements to seek a section 67(7) exemption in relation to the contract dated 6 December 2019 so that a motion can be made before the House of Assembly as soon as practicable.

I will continue to always act with honesty and transparency and once I am made aware of the contracts entered into by Caribbean Security with Government Departments I will make the relevant declarations, seek consultation or legal advice from the Attorney General and request a Resolution and motion in accordance with section 67(7) of the Constitution as soon as reasonably practicable.

I am happy for any recommendations that can be made to ensure that the principles of good governance are upheld and I have no intention of abuse my office of being dishonest.

Appendix A – Potential Criticism of Hon. Neville Smith - No.3

Reference is made to the contract entered into by Caribbean Security Limited, of which I am a director, dated 22 September 2020 to provide services to the BVI Ports Authority.

We note the potential criticism made by the Commission of Inquiry that the section 67 exemption from vacating his seat as an elected member of the House of Assembly has not been obtained and was contrary to and/or was in breach of section 67 of the Constitution.

We further note that the COI has made the potential criticism that Hon. Neville Smith has acted inconsistently with the principles of good governance and that corruption, abuse of office or serious dishonesty may have taken place.

As a response to the above, I, Neville Smith, wholeheartedly refute the criticisms made. I have always acted with integrity and honesty. I have acted consistently with the principles of good governance.

In this instance, I do recall signing the contract dated 22 September 2020 on behalf of Caribbean Security Limited at the request of my business partner, David Dupree, due to his inability at the time to sign on behalf of the Company.

I am also aware that a motion was not requested for an exemption under section 67(7) of the Constitution. Section 67 of the Constitution requires the declaration by a member of the House of Assembly on any contract with the Government of the Virgin Islands which he is a party to or a director of a Company which is a party to the contract. However, the BVI Ports Authority is a statutory board and is a separate corporate entity. The BVI Ports Authority is not considered a department of the Government of the Virgin Islands.

I sought legal advice on a number of occasions from the Attorney General and consulted with members of the House of Assembly on the position of declaring interests or contracts entered into with statutory boards and there was an agreed understanding that section 66 and 67 applied to contracts with the Government of the Virgin Islands and did not apply to statutory boards. As such, there was no legal requirement to declare interest in this regard nor was there a legal obligation to request an exemption under section 67(7) of the Constitution to prevent any breach of section 66 or 67 of the Constitution.

I will continue to make the relevant declarations of interests, seek consultation or legal advice on the position and request a Resolution and motion in accordance with section 67(7) of the Constitution where applicable.

However, I am also happy for any recommendations that can be made to ensure that the principles of good governance are upheld.

Appendix A – Potential Criticism of Hon. Neville Smith - No.4

Reference is made to two declarations of interest in the Island Sun Newspaper on 2nd and 9th February 2019 prior to my election to the Government of the Virgin Islands in 2019. In particular, that Caribbean Security Limited, of which I am a director, entered into a contract dated 16 November 2018 with the BVI Government to provide security services.

We note the potential criticism made by the Commission of Inquiry that the declarations did not properly set out the nature of the contract and that the section 66 of the Constitution was breached.

We further note that the COI has made the potential criticism that Hon. Neville Smith has acted inconsistently with the principles of good governance and that corruption, abuse of office or serious dishonesty may have taken place.

As a response to the above, I, Neville Smith, wholeheartedly refute the criticisms made. My role as director of the Company has been limited for over 10 years to occasionally signing cheques and making deposits on behalf of the Company in instances when my business partner was unable to do so. I am not in correspondence with any clients, that being Government departments or individuals, with respect to the services provided by Caribbean Security Limited. Furthermore, I am not provided with copies of contracts or notification of each contract to be entered into by Caribbean Security Limited.

Caribbean Security Limited was formed in 2002 to provide security alarm systems, fire alarm systems, access control card and biometrics and video surveillance to homes and businesses in the British Virgin Islands. Caribbean Security Limited offers the most advanced IP based closed circuit video (CCTV) solutions on the market in the British Virgin Islands and delivers high quality state of the art security solutions.

Although I am a director of Caribbean Security Limited, I am not involved in the day to day operations of the Company and have not personally engaged or entered into any contracts (noted in the Warning Letter) on behalf of the Company. My business partner, David Dupree, who lives in the United States of America and has over 40 years of

experience in the security industry, runs the daily operations of the Company as set out in his Letter dated 8 September 2021 annexed as Annex A to this written response.

However, prior to my election I ensured that I briefly set out the nature of any contract which may have been entered into by Caribbean Security Limited and the Government of the Virgin Islands in accordance with section 66 of the Constitution.

It was my intention in the declarations in the Island Sun Newspaper on 2nd and 9th February 2019 to briefly set out the nature of the businesses. I clearly set out that the contract entered into by Caribbean Security Limited and the BVI Government was to supply, install and maintain security systems. At the time I was not aware of each contract entered into by the Company, however, I was aware of the nature of services/contract which would be provided to the Government of the Virgin Islands and my interest as director of the Company, which was in accordance with section 66 of the Constitution.

Furthermore, as a newly elected official I sought advice from members of the House of Assembly on the information required in the declaration of interests and as such my responses on the declaration was in line with my colleagues in the Island Sun Newspaper on 9th February 2019 attached as Annex D.

I have been honest and transparent by declaring my interests and role in the Companies of which I am a director in instances where services have been provided to Government departments. However, I am also happy for any recommendations that can be made to ensure that the principles of good governance are upheld.



MEMORANDUM

FROM: Attorney General

TO: Honourable Speaker of the House of Assembly
Honourable Members of the House of Assembly

DATE: 24 March, 2015

Interpretation of Section 67(3)(e) of the Virgin Islands Constitution Order 2007

In the course of the proceedings before the House of Assembly on Friday the 20th day of March 2015 an issue of constitutional importance arose during QUESTIONS AND ANSWERS, which engaged the meaning of the expression "a contract with the Government of the Virgin Islands for or on account of the Public Service" used in section 67(3)(e) of the Virgin Islands Constitution Order 2007(SI 1648) (hereinafter called "the Constitution").

The specific questions and answers involved were as follows:

Question 4

Madam Speaker would the Premier and Minister of Finance please confirm whether or not Orion Law is engaged in any capacity, directly or indirectly, by the BVI Health Services Authority? If yes, would the Premier please furnish a copy of the contract or sub-contract?

Answer

Madam Speaker, Orion Law is engaged indirectly by the BVI Health Services Authority by Zolfo Cooper, the collecting agency engaged by the BVIHSA. Zolfo Cooper engaged Orion Law and other legal firms to provide advice to them.

Question 5

Madam Speaker would the Premier and Minister of Finance please confirm whether or not Orion Law is engaged in any capacity, directly or indirectly, by the Social Security Board? If yes, would be Premier please furnish a copy of the contract of sub-contract?

Answer

Madam Speaker, the firm Orion Law does provide services for the Board. On Wednesday, September 29, 2010, the Social Security Board approached Orion Law to provide a proposal for the provision of legal service to the Board. The proposal was submitted to the Board on October 13, 2010.

Government of the Virgin Islands, TTT Building, 4th Floor, P.O. Box 242,
Road Town, Tortola VG1110, Virgin Islands
Tel: (284) 468-2960 ~ Fax: (284) 468-2983 ~ E-mail: adc@gov.vi

The Board discussed the proposal and agreed on the following:

1. That initially, the Social Security Board would not enter into a contractual agreement and therefore, no retainer be paid until the relationship was cemented.
2. Orion charges a flat fee for demand letters.
3. Orion charges for appearances in court, based on an hourly rate.
4. Orion offset the cost by any legal fee recovered for employers.

This was communicated to Orion Law by letter dated November 24, 2010. By letter dated March 9, 2011 from Social Security Board and letter dated March 23, 2011 from Orion Law, it was agreed that the Board would forward files for collection of past due contributions."

In supplementary questions following from the above, it was evident that the contract between Orion LAW and Zolfo Cooper acting as a collecting agent for BVIHSA was being questioned as being contrary to section 67(3) (e) of the Virgin Islands Constitution. Two members of the House of Assembly appear to have an interest in ORION LAW.

I, on the request of the Honourable Speaker, provided an extempore advice on that day. Because of the constitutional importance of this provision, I consider it as my duty to this august House of Assembly to provide a written and more comprehensive opinion expanding upon that advice. Madam Speaker, Section 67 relevantly provides as follows:

"(3) An elected member of the House of Assembly shall also vacate his seat in the house

(a) - (d) deleted

(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 is a partner, or a 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."(underlining supplied)

Sole constitutional issue:

The sole issue is whether a contract entered into by a member of the House of Assembly with a statutory body or corporation and in particular, the BVI Health Services Authority is caught by section 67(3)(e) and therefore subject to the punitive consequence of vacating his seat as a member of the House of Assembly.

For the reasons that follow, I venture to submit that such a contract is not within the contemplation of section 67(3)(e). This is because a statutory corporation is a distinct and separate juridical entity apart from the Government of the Virgin Islands, as that latter term is used and understood under the Constitution and laws of the Virgin Islands.

Government of the Virgin Islands, TIT Building, 4th Floor, P.O. Box 242,
Road Town, Tortola VG1110, Virgin Islands
Tel: (284) 468-2960 ~ Fax: (284) 468-2963 ~ E-mail: adc@gov.vi

A. BRITISH VIRGIN ISLANDS HEALTH SERVICES AUTHORITY ACT, 2004

The BVI Health Services Authority is established as a body corporate with perpetual succession and a common seal, capable of suing and being sued in its corporate name (sections 1 & 2). The Authority is managed by a Board. On the establishment of the Authority certain public officers were transferred from the public service to the Board and they ceased to be public officers. They became employees of the Board (section 28). Certain properties and interest which belonged to the Crown and used and acquired exclusively for the purpose of the Peebles Hospital or community services were transferred to and vested in the Board. The nature of the Board is neatly captured by the definition of "statutory board" provided in Statutory Boards (Remuneration of Public Officers) Act 2004. In the above mentioned Act a "statutory board" is defined as any board, authority, corporation, commission, committee, council, trust, or other like body established by or under any relevant enactment".

It is clear from the above that the board is a distinct and separate legal entity from the Government of the Virgin Islands. The manner in which a statutory board is financed or managed does not alter the complexion of this advice. The fact remains that the legislative scheme accords the Board separate legal personality from the Government of the Virgin Islands.

B. VIRGIN ISLANDS CONSTITUTION ORDER 2007

The Constitution provides very useful definitions in section 2 for the following expressions:

- "Public service" means the service of the crown in a civil capacity in respect of the Government of 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."

As a derogation from the constitutional right of "private and family life and privacy of home and correspondence" provided under section 19, sub-section 3(c) thereof enables "an officer or agent of the Government of the Virgin Islands, a local government authority or a body corporate 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."

It is important to note that the Constitution, by this section, recognizes or draws a sharp distinction between three juridical entities, namely: the Government of the Virgin Islands, a local government authority and a body corporate; such as the BVI Health Services Authority. Furthermore, for purposes of section 26 of the Constitution which deals with discrimination, a

Government of the Virgin Islands, TIT Building, 4th Floor, P.O. Box 242,
Road Town, Tortola VG1110, Virgin Islands
Tel: (284) 468-2960 ~ Fax: (284) 468-2983 ~ E-mail: sgc@gov.vg

"public authority" is specifically defined to mean "any statutory body or company or association in which the Government of the Virgin Islands has an interest and which performs public function or duty". This definition is also used for purposes of section 31(5) of the Constitution which provides for enforcement of fundamental human rights.

It would appear from the above that the expression "public authority", as used in section 26, is broader in scope than the expression "the Government of the Virgin Islands". The term "public authority" is wide enough to encompass the Government of the Virgin Islands, any local government or statutory body. It is to be noted that in the House of Lords decision in Parochial Church Council of the Parish of Aston Cantlow and Wilmcote with Billesley, Warwickshire (Appellants) Wallbank and anor (Respondents) 2003 UKHL17, Lord Nicholls of Birkenhead considered the meaning of 'public authority' in the United Kingdom Human Rights Act 1998 and commented on the expression more expansively as follows at paragraph 6:

"The expression 'public authority' is not defined in the Act, nor is it a recognized term of art in English law, that is an expression with a specific recognized meaning. The word 'public' is a term of uncertain import, used with many different shades of meaning: public policy, public rights of way, public property, public authority (in the Public Authorities Protection Act 1893), public nuisance, public house, public school, public company. So in the present case the statutory context is all important. As to that the broad purpose sought to be achieved by section 6(1) is not in doubt. The purpose is that those bodies for whose act the state is answerable before the European Court of Human Rights shall...be subject to a domestic law obligation not to act incompatibly with convention rights. If they act in breach of this legal obligation victims may ... obtain redress from the courts of this country..."

This decision may have influenced the draftsman of the Constitution in couching the definition of 'public authority' in such wide terms. Be it noted that the expression "public authority" did not find its way into section 67.

The draftsman in these two sections of the Constitution made it clear that a statutory body is a "public authority". It is significant to note, however, he did not equate a statutory board with Government of the Virgin Islands.

Furthermore, section 26(4) (a) of the Constitution as a derogation from the right to protection from deprivation of property has permitted the imposition of taxation or appropriation of revenue by the Government of the Virgin Islands or any local authority or body for local purposes.

Again section 26(5) as a further derogation from the right has provided that "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 or a body corporate established by law for public purposes".

Also section 41 provides that "The Governor may.....make grants and dispositions of lands or other immovable property in the Virgin Islands or interests in such property that are vested in Her

Government of the Virgin Islands, TIT Building, 4th Floor, P.O. Box 242,
Road Town, Tortola VG1110, Virgin Islands
Tel: (284) 468-2960 - Fax: (284) 468-2983 - E-mail: edc@gov.vg

Majesty for the purposes of the Government of the Virgin Islands....."

See also section 56(1) which provides that "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 any other law) of any business of the Government of the Virgin Islands including responsibility for the Administration of any department of government.

Additionally, section 56(6) provides that "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.

See also section 60 which provides "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...

Section 23(4) states that 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.

Section 24(4) is in identical terms to section 23(4).

It is demonstrably clear from the internal evidence in the Constitution itself that there is a clear distinction between the expression "Government of the Virgin Islands" and a statutory body or corporation. Where there is a clear intention in a particular section of the Constitution to add to the Government of the Virgin Islands, other public entities, the Constitution so provides. The reverse is also true. If there is no need to extend the particular provision to include other distinct entities such as a body corporate, the Government of the Virgin Islands becomes the only subject of the particular section of the Constitution.

Case law

Tamlin v Hannaford (1950)1 KB 18

In this case, speaking of the British Transport Commission which was established by the Transport Act 1947 as a statutory corporation, Lord Denning said the following which is worthy of note:

"It has many of the qualities which belong to corporations of other kinds to which we have been accustomed. It has for instance, defined powers which it cannot exceed: and it is directed by a group of men whose duty it is to see that those powers are properly used. It may own property, carry on business, borrow and lend money, just as any other corporation may do, so long as it keeps within the bounds which Parliament has set. But the significant difference in this corporation is that there are no shareholders to subscribe the capital or to have any voice in its affairs..... In the eye of the law, the corporation is its own master

and is answerable as fully as any other person or corporation. It is not the Crown and has none of the immunities or privileges of the Crown. Its servants are not civil

Government of the Virgin Islands, TIT Building, 4th Floor, P.O. Box 242,

Road Town, Tortola VG1110, Virgin Islands

Tel: (284) 468-2960 ~ Fax: (284) 468-2983 ~ E-mail: agc@gov.vi

servants, and its property is not crown property. It is as much bound by Acts of Parliament as any other subject of the King. It is of course, a public authority and its purposes no doubt are public purposes, but it is not a government department nor do its powers fall within the province of government"

Tamlin v Hannaford *supra* was cited, with approval, by the Privy Council in the case of Perch and others v Attorney General of Trinidad and Tobago (2003) UKPC 17.

The issue in that case was whether persons employed in the Trinidad and Tobago Postal Corporation, a body established by Trinidad and Tobago Postal Corporation Act 1999...are to be regarded as in the service of the Government of Trinidad and Tobago in a civil capacity within the meaning of those words in section 3(1) of the 1976 Constitution.

Their Lordships observed in relation to the corporation as follows: it was given wide powers (section 7) including borrowing powers (sections 31 and 32) and was required to operate on sound business principles (section 8a) and to implement government policy as conveyed to it (section 8b)..... management of the corporation was entrusted to a small board, appointed by the President (section 11(1)) acting on the advice of the responsible Minister.....the President could revoke the appointment of a board member and the Minister could give directions in writing to the board on matters of broad policy, to which the board was obliged to give effect to.....there were detailed financial provisions in Part V of the Act; the corporation was to be financed partly by parliamentary appropriations....

Despite all of the above it was held that Tamlin applied. Lord Bingham of Cornhill said the following at paragraph 15 of the judgment:

"The Board is of the clear opinion that employees of the new corporation are not holders of any public office and are not employed in the service of the Government in a civil capacity within the meaning of section 3(1) of the Constitution".

Similar sentiments were expressed by the Board in the 2009 decision of Attorney General v. Smith [2009] UKPC 50. The sole issue to be determined was whether the Attorney General of Trinidad and Tobago was the proper party in a constitutional motion which alleged infractions of enshrined rights by the Statutory Authorities Services Commission ("SASC"). The Respondent contended that section 19(2) of the State Liabilities and Proceedings Act Cap. 8:02 provided that legal proceedings for and against the State shall be taken in the name of the Attorney General. The Appellant (the Attorney General) objected relying on sections 19(8) and (9) of the Act which had come into force after certain statutory amendments enacted in 1998. According to section 19(8) of the State Liabilities and Proceedings Act, proceedings against an authority were deemed to be proceedings against the State. However the term "authority" referred to a Service Commission as defined in section 3(1) of the Constitution: section 19(9). In this regard, it was relevant that the SASC was not one of the four Commissions created under section 3 of the Constitution.

The Board reaffirmed the dichotomy between the Government and statutory corporations in relation to state responsibility. At paragraph 16 Lord Walker, relied on the decision in Tamlin v.

Government of the Virgin Islands, TIT Building, 4th Floor, P.O. Box 242,

Road Town, Tortola VG1110, Virgin Islands

Tel: (284) 468-2960 ~ Fax: (284) 468-2983 ~ E-mail: agc@gov.vg

Hannaford supra and asserted:

"Those employed in the local government of statutory corporations are working in the public sector (a much wider expression) but are not in the Crown Service".

In coming to its decision, the learned Law Lords also took the intention of Parliament into consideration. It was noted that the SASC had already been in existence at the time when the State Liabilities and Proceedings Act was being amended and thus the distinction made between Service Commissions accorded constitutional status and those which were not, must have been intentional. Given the circumstances the Board held that the clear legislative intent must be upheld. The position was stated thus, at paragraph 18:

"When the new Constitution was being drafted and considered the service commissions were already in existence, carrying out the important functions described by Lord Diplock in *Thomas v. A-G of Trinidad and Tobago*, SASC was already in existence carrying out similar functions in relation to statutory authorities... it is inconceivable that Parliament did not have it well in mind, in making the amendments, that they were making an important procedural distinction between the four Service Commissions, on the one hand, and the Integrity Commission, the Salaries Review Commission and the SASC, on the other hand".

In Smith supra Lord Walker concluded as follows (see paragraph 24):

"In the Board's opinion the scheme and language are clear. The Attorney General is to represent the state (in effect), central government.... Other statutory bodies, even if public authorities are not part of the state and are not deemed to be part of the state."

Indeed, this statement applies to the position of the Attorney General of the Virgin Islands where section 58 (2) of the Constitution provides that "the Attorney General shall be the principal legal advisor to the Government of the Virgin Islands."

In the case of La Generales des Carriers et de Mines v Hemisphere Associates LLC (Jersey) 2012 UKPC 27 Lord Mance made the following important observation about separate juridical entities in the area of sovereign immunity which is apposite. He said:

"An entity's constitution, control and functions remain relevant... But constitutional and factual control and the exercise of sovereign functions do not without more convert a separate juridical entity into an organ of the state. Especially where a separate juridical entity is formed by the state for what are on the face of it commercial or industrial purposes, with its own management and budget, the strong presumption is that it's separate corporate status should be respected.

It seems to me from the above that the width of the expression "a contract with the Government of the Virgin Islands for or account of the Public Service" as used in s. 67(3)(e) of the Constitution

Government of the Virgin Islands, TTT Building, 4th Floor, P.O. Box 242,

Road Town, Tortola VG1110, Virgin Islands

Tel: (284) 468-2960 ~ Fax: (284) 468-2983 ~ E-mail: agc@gov.vg

does not cover contracts with statutory corporations.

Wherever in the Constitution, it was intended to make reference to a statutory corporation, specific reference was made to it. Indeed it is submitted that, the draftsman having previously used "body corporate established by law for public purposes" and "public authorities" in other parts of the Constitution would more readily and easily have used those two expressions in section 67 if there was an express intention to include statutory corporations under sections 66 and 67 respectively. Indeed the provision would have provided in addition to the words in section 67 either of the following"

- (i) a contract with the Government of the Virgin Islands, or a body corporate established by law for public purposes,
- (ii) a contract with the Government of the Virgin Islands and other public authorities

This clearly would have included statutory corporations. Based on the foregoing discussion, it is my considered view that there was no intention to include statutory bodies or corporations in section 67 of the Constitution.

Conclusion

A contract with the BVI Health Services Authority by a member of the House of Assembly does not infringe section 67(3)(e). Such a contract is not an unconstitutional act and ought not to attract the punitive consequences of section 67.

May the House of Assembly be guided accordingly.



Baba Aziz
Attorney General

Government of the Virgin Islands, TTT Building, 4th Floor, P.O. Box 242,
Road Town, Tortola VG1110, Virgin Islands
Tel: (284) 468-2960 ~ Fax: (284) 468-2983 ~ E-mail: agc@gov.vg



Our ref: AGC G 12/2/2

15 October, 2021

Mr. Andrew King
Senior Solicitor
BVI Commission of Inquiry
Room RB 1.11
22 Whitehall, London
SW1A 2 EG

Dear Mr. King,

Thank you for your letter of 11 October 2021 requesting written submissions in relation to ss. 66 and 67 of the Virgin Islands Constitution in response to questions posed in that letter. As the questions seek information on matters of fact, I set out my responses below.

- 1. Has any Attorney General advised previously as to whether a works order or purchase order is a contract for the purposes of section 66 and/or section 67 of the Constitution**

Having made enquiries in Chambers, I have not found any record of advice on whether a works order or purchase order is a contract for the purposes of section 66 and/or section 67 of the Constitution.

- 2. Has any legislator (be it a member of the House of Assembly or any precursor body) had to vacate his or her seat pursuant to a motion brought under section 67 of the Constitution (or equivalent precursor legislation)**

I believe that, around late 1995/early 1996, the Hon. Speaker at the time, Mr. Keith Flax, demitted office on account of a failure or refusal to seek a Legislative Council exemption for entering into a contract with the Government. I understand that this matter involved a lease whereby Mr. Flax rented/leased his building or part of it to the Tourist Board (a statutory body) without seeking an exemption from the Legislative Council. The 1976 Constitution would have been in force at the time.

- 3. Has any Attorney General advised that statutory boards do fall within the ambit of section 67 of the Constitution (or equivalent precursor legislation);**

I understand that in relation to the matter involving Mr. Keith Flax and the Tourist Board (mentioned above), advice had been given by the then Attorney General. However, I have not been able to locate any such advice and in so doing, to confirm the position.

On the other hand, the current Attorney General has located advice from the previous Attorney General which makes a distinction between the Government and statutory bodies for the

purposes of s. 67. Copies of those advices dated 24 March, 2015 and 24 January, 2017 respectively are attached.


4. **Has any member of the House of Assembly contended that section 67 of the Constitution applies to a contract with a statutory board;**

Based on the advice of the previous Attorney General, it is reasonable to assume that there was a contention in the House of the Assembly as to whether s 67 of the Constitution applies to contracts with a statutory body.

5. **Has any member of the House of Assembly contended that section 67 of the Constitution applies to a contract with a statutory board because the latter is indirectly a contract with government.**

This is currently a live issue with the Members of the House of Assembly who generally appear to take the view that s.67 of the Constitution does not apply to a contract with a statutory body. This seems to be based on the advice provided by the previous Attorney General. Members also recognise that the former Speaker (Flax) had vacated his seat because of a contract with a statutory body and have generally questioned whether that situation was correctly handled.

I hope that my responses are helpful.



Dawn J. Smith
Attorney General



Attorney General's Chambers
Government of the Virgin Islands

24th January 2017

Honourable Andrew Fahie
The House of Assembly
Road Town, Tortola
British Virgin Islands

Dear Honourable Fahie:

This is to acknowledge receipt of your correspondence dated 4th January 2017 (received in this office on the same date). The correspondence contains a request to me to invoke my discretion under the Attorney General's reference Act, 2011 to seek the Court of Appeal's interpretation of section 67 of the Virgin Islands Constitution Order 2007. I returned to office on 23rd January 2017 and discovered that there had been no acknowledgement to your correspondence. Accordingly, I thought it was proper to immediately acknowledge and respond adequately to your correspondence of such weighty constitutional importance.

Your request has referred to the legal opinion which I had provided to the House of Assembly almost two (2) years ago. To be precise, I provided an *extempore* oral opinion on 20th March 2015, which I followed up with an eight (8) page written opinion dated 24th March 2015.

In that opinion, I ventured to conclude, in essence, that the expression "any contract with the Government of the Virgin Islands for or on account of the public service" which appears in section 67 of the Virgin Islands Constitution Order 2007 (the Constitution) did not include a contract entered into with a statutory corporation.

The position that I took was not a matter of mere opinion. It was supported by authoritative pronouncements of the Privy Council as well as the internal evidence in the Constitution itself of the clear distinction between the Government of the Virgin Islands and statutory corporations. In my considered opinion, however artificial that distinction may appear to the general populace, artificiality in law is recognised in some instances, as for example the legal fiction that a company has a separate and distinct personality from the shareholders who constitute it. See section 27 of the BVI Companies Act 2004.

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Tel: (284) 468-2960 ~ Fax: (284) 468-2983 ~ E-mail: agc@gov.vg

It appeared to me in March 2015 that the majority of the House of Assembly had accepted my advice on the subject. I must however, acknowledge your, and that of the opposition party's forceful verbal disagreement with my advice.

Since the issue of my advice to the House of Assembly, two significant events had occurred, namely the dissolution of the House of Assembly on 1st May 2015 and the election of the members of the House of Assembly on 8th June 2015. Section 87 of the Virgin Islands Constitution Order 2007 and section 58 of the Elections Act 1994 as amended provide specific and special procedures for resolving matters affecting the membership of the House of Assembly.

It is against this factual backdrop that you now request that I exercise my discretion to obtain approval of Cabinet under Attorney General's Reference Act 2011 for further interpretation of section 67 of the Constitution.

I have carefully considered your request and wish to acknowledge the importance of the reasons informing that request. You have relied on contrary public opinion and unnamed legal professionals advice as a basis for your request.

I regret, and with respect, wish to say that I have not been provided with strong grounds refuting the authoritative pronouncements of the Courts on which I relied in coming to the conclusion that, in our jurisdiction, there is a clear legal distinction between statutory corporations and the Government of the Virgin Islands.

I am fortified by the conclusion that I have previously reached by comparing our section 67 with sections 55 and 56 of the 1975 Constitution of the state of Victoria in Australia. Section 56 in particular provides as follows:

Any reference in the last two preceding sections to any bargain or contract entered into by or on behalf of Her Majesty in right of the state of Victoria **shall subject to subsection 2 be deemed to include a reference to-**

- (a) any contract entered into by any Government department or by any Minister of the Crown in his capacity
- (b) (without affecting the generality of the last preceding paragraph) any contract entered into by any public statutory body"

Thus, by the deeming provision in section 56, any bargain or contract entered into by or on behalf of Her Majesty in right of the State of Victoria was extended to include contracts with public statutory bodies, a recognition that the expression would not ordinarily have applied to public statutory corporations.

59 of the Virgin Islands Constitution Order 2007, particularly when it is provided as part of the proceedings in the House of Assembly, nor the specific provisions of sections 67 and 87 of the Constitution and the Elections Act 1994 as amended.

I have paid due regard to the clear constitutional principle that matters relating to the membership of the House of Assembly and decisions thereon concern the rights and privileges of the Assembly. In such matters, the House of Assembly has jurisdiction to determine itself the status of those who claim to be its members unless either by the terms of the Constitution, the power or jurisdiction to determine that status has been vested in the court, or that the Legislature has consented to or concurred in vesting that jurisdiction in the Courts. The rights and privileges of the Assembly have always been jealously maintained by that institution. See in this regard section 82 of the Constitution. The decisions of the Privy Council in Theberge v Laudry (1876) UKPC 48 and George Silva v Attorney General of Ceylon (1949) UKPC 23 speaks to this issue.

In the light of all of the above, particularly the clear and special constitutional and statutory provisions with respect to the membership of the House of Assembly, I regret to say that I am not inclined to invoking the more general provisions of the Attorney General's Reference Act 2011.

In declining to invoke the Reference Act, I am not unaware of the possibility of the distortion of my views on this matter. I have now read the article carried in the Virgin Islands News Online publication of 30th December 2016 which I discovered on my return from leave from office. I need to quote the content verbatim;

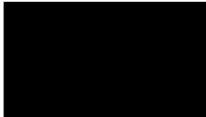
"However, current Attorney General Baba Aziz has a different interpretation of section 67, and in a written opinion said that a purchase order given by government as commitment for services is not a contract therefore Mr. Walwyn did not become a party to any contract with the Government of the Virgin Islands"

I would conclude, in the light of the immediately preceding paragraph, by borrowing from and amending the words of Sir Kentridge Q.C. in his Lecture on the Topic: Human Rights; A sense of Proportion, delivered on February 26 and 27 at Oxford as part of the Tanner Lectures on Human Values: to suit the particular circumstances of this case.

"In the exercise of my advisory function under section 59 of the Constitution I shall maintain and jealously guard my independence and not bow or yield to pressure of public opinion however harsh, still less to party political opinion however exalted, and least of all to the manufactured indignation of sensational journalism."

I have discharged my constitutional function and stand by it and respectfully
acknowledge that my opinion need not be accepted by all.

My best regards,



Baba Aziz
Attorney General



THE HOUSE OF ASSEMBLY OF THE VIRGIN ISLANDS

Honourable Andrew A. Fahie
*Member for the First District &
Member of Her Majesty's Loyal Opposition*

*Richard C. Stout Building
P.O. Box 2390
Road Town, Tortola
British Virgin Islands VG 1110
Tel: (284) 468-6900
(284) 494-3701 Ext. [REDACTED]
Cell: (284) 542-8325
Fax: (284) 468-1008
Email: [REDACTED]*

Honourable Baba Aziz,
Attorney General,
Attorney General's Chambers,
TTT Building,
Road Town, Tortola,
British Virgin Islands

4th January, 2017

Hon. Attorney General,

I write in relation to your interpretation as presented to Members of the House of Assembly of the Virgin Islands as it relates to section 67 of the Virgin Islands Constitutional Order 2007. As you are aware I continue to raise concern as to compliance by some Members of the House of Assembly with this important Constitutional provision. I have confidence that you discharge your responsibilities as Attorney General in a fair, balance and professional manner and look forward to continue working with you as Government principal legal advisor to further the work of the people.

Notwithstanding my personal confidence in the General discharge of your responsibilities there remain concerns and questions by members of the community including trained legal professionals as to the correctness of your interpretation of section 67. You are well positioned to know that the law is often opened to different interpretations, not as a matter of right or wrong, but as a matter of persuasion and choice of precedent that's chosen.

Many of our residents are of the view, that your interpretation of section 67 of the Virgin Islands Constitutional Order 2007 does not heed the constitutional safeguard to prevent Members of the House of Assembly from engaging in activities that may be a conflict of interest. My own belief is that the section is designed to protect both individual Members of the House and the House of Assembly on a whole.

Let me say categorically that I respect your professionalism and commitment to your role as Attorney General and the valuable contribution you continue to make by way of interpretation and legal guidance that you continue to provide. However, as you are aware opinions of the Attorney General persuasive as they may be, do not have the force of law. It is perhaps the unbinding status or nature of the Attorney General's opinion and not its correctness that contributes to the sense of lack of reception of your opinion on this matter. In this regard, many residents are of the firm view and I am in agreement with their view that this matter is of such importance so as to warrant the interpretation of the judiciary, whose role it is under our Constitution to interpret the laws of the Territory.

Accordingly, I respectfully write both in my capacity of Chairman of the Virgin Island Party and as the People's representative of the First Electoral District and Member of the House of Assembly and request that you seek Cabinet's approval to avail yourself of the powers granted to you under Section 3 of the Attorney General's Reference Act No. 17 of 2011 and invite an opinion from the Court of Appeal as to the interpretation of Section 67.

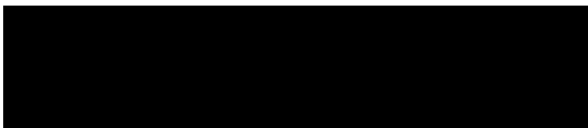
In particular, if Cabinet approval is granted I would be grateful if you can seek the Court's opinion as to the following questions. First, under what circumstances Members of the House of Assembly can do business and contract with the Government of the Virgin Islands. Second, what are the necessary declaration and procedure to be adopted before such Member can be considered to be protected under the law. Third, under what circumstances does a Member who has a private business interest with a company or firm that engages in business with the Government, becomes a party to a

contract with Government. Fourth, whether a Member who has a private business interest with a company or firm which engages in contract, or business with a Statutory Body of the Government engages in a contract with the Government and therefore subject to section 67 restrictions. In addition, any other questions, which you believe may be appropriate to refer to the Court.

I believe that the time has come for some finality to be brought to this matter. It may very well be that the Court of Appeal may concur with your interpretation. If so, then residents can take comfort that Members of the House are in fact in compliance with the law as it regards to declaration of interest and conduct of business by Members with the Government of the Virgin Islands. If the Court of Appeal rules to the contrary, their opinion will undoubtedly provide guidance for Members and will likely to settle this important matter once and for all.

I look forward to hearing from you as it relates to Cabinet's decision and this important request made on behalf of residents of the Territory.

Yours Truly,

A large black rectangular box redacting the signature of Andrew A. Fahie.

Andrew A. Fahie
Member of Her Majesty's Loyal Opposition
& Representative for the First District



March 12th, 2021

The Rt. Hon Sir Gary Hickinbottom
Commissioner, British Virgin Islands Commission of Inquiry
C/O Mr. Steven Chandler
Secretary of the British Virgin Islands Commission of Inquiry
Room RB 1.11
22 Whitehall
London SW1A 2EG

Dear Mr Chandler

I am writing to you in response to your letter sent to me on 8 March 2021 entitled '*The Premier, Request for Information / Documents No 1*', which I understand the IRU has given reference number 'R0012'.

I do not recall an occasion on which Ministers or Members raised matters with me under paragraph 2.25 of the Cabinet Handbook that were not later raised in the Cabinet meeting itself.

I do, however, recall that there have been occasions in which a Minister has made a declaration of interest in relation to a matter at a Cabinet meeting, and has then been excused from participating in discussions about that matter at the meeting. No doubt the Cabinet Secretary will be able to furnish you with those records.

Please do not hesitate to let me know if you require further information.

Yours sincerely,

Andrew A. Fahie
Premier and Minister of Finance



18th June, 2019

Mr. Ben Merrick
Director
Overseas Territories Directorate
Foreign and Commonwealth Office
King Charles Street
London
United Kingdom

Dear Mr. Merrick,

BEN MERRICK VISIT FOLLOW-UP

It was my pleasure to receive you during your recent visit to the Territory from 3-6 June. I found our various meetings to be highly constructive. You will recall that during our bilateral meeting we discussed a number of important issues on which I stated the Territory's position:

Register of Interests

- Register of Interests of Ministers will be made public immediately following further consultation with the Governor

Ministerial Code

- A Ministerial Code will be adopted by October 2019 at the earliest with the advice of other Heads of Government and Ministers of Government within the Caribbean region

Integrity Commission

- An Integrity Commission will be established by the end of 2019 led by the Premier's Office as the lead ministry

Procurement Act

- The new Procurement Act will go to Cabinet by 1st October, 2019.

Recovery Development Agency and UK Loan Guarantee

- The Government of the Virgin Islands will consult with the public on the Recovery Development Plan and Agency and UK Loan Guarantee to determine a clear policy with the full input of the public within the next two weeks.
- The Government of the Virgin Islands would welcome the UK Government placing in writing their willingness to relax the Protocols for Effective Financial Management in relation to the UK Loan Guarantee, should it be exercised.

Tender Waivers

33 Admin Drive, Road Town, TORTOLA VG1110
British Virgin Islands
Tel: (284) 494-3808 / 3701 ext. [REDACTED] • Fax: (284) 494-3349 • Email: premier@gov.vg

- Tender waivers are exceptions to the normal tendering process that should only be done for legitimate reasons that are clearly explained in the decision.

Public Registers of Beneficial Ownership

- Please see attached letter to His Excellency the Governor dated 14th June, 2019.

Transparency and Accountability

- Government of the Virgin Islands remains concerned that the numerous questionable actions by the past administration in terms (i.e. BVI Airways deal, Pier Park development where sufficient evidence exists but legal actions not pursued to date by the responsible authorities).
- Lack of accountability and transparency by the previous administration should not go unaddressed by law enforcement.
- As discussed, ALL actions deemed necessary to re-establish and strengthen transparency and accountability will be explored and implemented by my Government. However this must be done in concert with the requisite authorities sending a strong message that questionable actions of the past administration will not be tolerated

Modern Partnership

- Premier and Governor will work to improve their current relationship

Where these issues are a shared priority, my Government looks forward to working with UK colleagues.

Mr. Merrick, you have my highest assurances that my Government will follow-up on the matters above. I look forward to seeing you again in the Cayman Islands at the UK/OT International Trade Summit toward the end of the month.

Sincerely,



Andrew A. Fahie
Premier and Minister of Finance

Cc. Lord (Tariq) Ahmad, Minister of State for Commonwealth and United Nations at the Foreign and Commonwealth Office
His Excellency, Augustus Jaspert, Governor of the British Virgin Islands

CABINET MEETING NO. 30 OF 2019

Published

· 07 November 2019 · Premier's Conference Room, Road Town

· **Agenda No:** C/2/AGEN/35/2019 (/agendas/38)







Present

| | | |
|--|-------------------------------------|---|
| ✎ (/minutes/40/minute_items/1747/edit) The Governor and Chairman | Mr. Augustus J. Jaspert | 🗑 (/minutes/40/minute_items/1747) |
| ✎ (/minutes/40/minute_items/1748/edit) The Premier and Minister of Finance | Hon. Andrew A. Fahie | 🗑 (/minutes/40/minute_items/1748) |
| ✎ (/minutes/40/minute_items/1750/edit) Minister for Natural Resources, Labour and Immigration | Hon. Vincent Wheatley | 🗑 (/minutes/40/minute_items/1750) |
| ✎ (/minutes/40/minute_items/1751/edit) Minister for Transportation, Works and Utilities | Hon. Kye Rymer | 🗑 (/minutes/40/minute_items/1751) |
| ✎ (/minutes/40/minute_items/1752/edit) Minister for Education, Culture, Youth Affairs, Fisheries and Agriculture | Dr. the Hon. Natalio Wheatley | 🗑 (/minutes/40/minute_items/1752) |
| ✎ (/minutes/40/minute_items/1753/edit) Minister for Health and Social Development | Hon. Carvin Malone | 🗑 (/minutes/40/minute_items/1753) |
| ✎ (/minutes/40/minute_items/1754/edit) Attorney General | Hon. Baba Aziz | 🗑 (/minutes/40/minute_items/1754) |

Cabinet Officials

| | | |
|-------------------|--------------------|---|
| Cabinet Secretary | Ms. Sandra Ward | 🗑 (/minutes/40/minute_items/1755) |
|-------------------|--------------------|---|

In Attendance

| | | | |
|--|--|--|---|
|  (/minutes/40/minute_items/1756/edit) Deputy Governor | Mr. David Archer, Jr. | (For Agenda Item Memo No. 379/2019) |  (/minutes/40/minute_items/1756) |
|  (/minutes/40/minute_items/1757/edit) Permanent Secretary, Deputy Governor's Office | Mrs. Sharleen DaBreo Lettsome | (For Agenda Item Memo No. 379/2019) |  (/minutes/40/minute_items/1757) |
|  (/minutes/40/minute_items/1758/edit) UK Security and Justice Advisor | Mr. Rohan John Burdett | (For Agenda Item Memo No. 379/2019) |  (/minutes/40/minute_items/1758) |

Commencement and Opening Prayer

 (/minutes/40/minute_items/1759/edit)

The Chairman called the meeting to order at 3:20 p.m. The prayers were said by the Premier and Minister of Finance.

Matters Arising

| | | |
|------------|------------|------------|
| [REDACTED] | [REDACTED] | [REDACTED] |
|------------|------------|------------|

15.

[REDACTED]

| | | |
|------------|------------|------------|
| [REDACTED] | [REDACTED] | [REDACTED] |
|------------|------------|------------|

16.

[REDACTED]

17.

[REDACTED]

Matters for Consideration



(/minutes/40/minute_items/1709/edit)
REx/378/2019 (/decisions/91)

Memorandum - NO. 378/2019 - BY
THE GOVERNOR - Integrity in
Public Life Policy
(/memorandums/406)



(/minutes/40/minute_it

Deliberations

18. The Governor presented this paper.
19. The Premier asked what obtained in other countries, with respect to the drafting of this legislation, who would determine the Chairman of the Integrity Commission. He said that in some countries, the Governor General selected the Chair and in others, the Prime Minister chose the Chairman of the Commission.
20. The AG pointed out that the Criminal Code has exhaustively dealt with Bribery and Corruption of "public officials". The expression of public officer is defined very broadly and that the Integrity Commission will serve as a bridge between the executive and the courts in relation to those issues.
21. The Premier stated that his preference to hold public consultation after the first reading of the Bill in the House of Assembly and not before the Bill is introduced in the House. This would be in keeping with his Administration's practice to hold public consultations after the first reading.
22. Cabinet agreed to amend item (d) in the decision sought to reflect this.

23. Cabinet:

1. reviewed and approved the draft Integrity in Public Life Policy that aims to promote and enhance standards of ethical conduct for public officers, legislators and Statutory Agencies and State Owned Enterprises;
2. decided that the Bill entitled Integrity in Public Life, 2003 be reviewed in line with the policy and incorporate a review of the Register of Interests and Complaints Commission Acts;
3. decided that the Deputy Governor's Office instruct the Attorney General's Chambers to draft the new Bill; and
4. agreed to public consultation following after the first reading of the Bill in the HOA.

24. The Minister for Education, Culture, Youth Affairs, Fisheries and Agriculture registered his concerns with the policy. Although he believes in an Integrity Policy, he was of the view that there was potential for people to interpret what integrity is. The Minister said that he had lost faith in the public tendering process and found that it was not as cost-effective as it should be because the lengthy timeline frustrates the process to expedite matters.

- The Minister agreed with the
25. public consultation on Integrity in Public Life Bill but because he had a differing view on the awarding of contracts, he would like the opportunity to interrogate more before it advances.
26. The Chairman said this was not meant to be a “straight jacket: but the Bill would help to raise the standards and help people do the right thing or carry out the right intentions.
27. The Minister for NRL and Immigration commented that he had read the paper with great interest. However, he stressed the need to grow an economy that could sustain families. He said that salaries needed to be increased otherwise this could be a recipe for officers to engage in corrupt practices.
28. The Chairman stated that the public service must be free of corruption if the goal was to develop a world class public service.
29. The Premier stressed the importance of appointing true professionals to the Integrity Commission. He mentioned retired judges from the Caribbean region because they would have a better understanding of the Virgin Islands. The Premier stated that proper and fit persons who would

handle matters based on facts and not personal perceptions should be appointed to the Commission. He said that it was important that the standards for the Commission be conducive to the environment in which we live because some international standards may not be effective in this area. The Premier reiterated his position of the need for mature people to be appointed to the Commission and mentioned that he took seriously the composition of the Commission.

30. Referencing the selection of the Chairman, the Premier said that when selected, there should be no impartiality on that person's side.
31. The Premier asked if the RDA would be captured in this Bill given the fact that they handle millions of dollars. The AG confirmed the RDA and all other Statutory corporations would be covered by the Bill.
32. The Chairman said this was one component of a wider suite of proposed legislation, including the Public Service Management Act and the Whistleblowers Bill.
33. The Chairman stated that the AG had mentioned that he had drafted the Whistleblowers Bill but that there were elements already included in the Public Service Act;

therefore, he was amending accordingly. The AG confirmed yes.

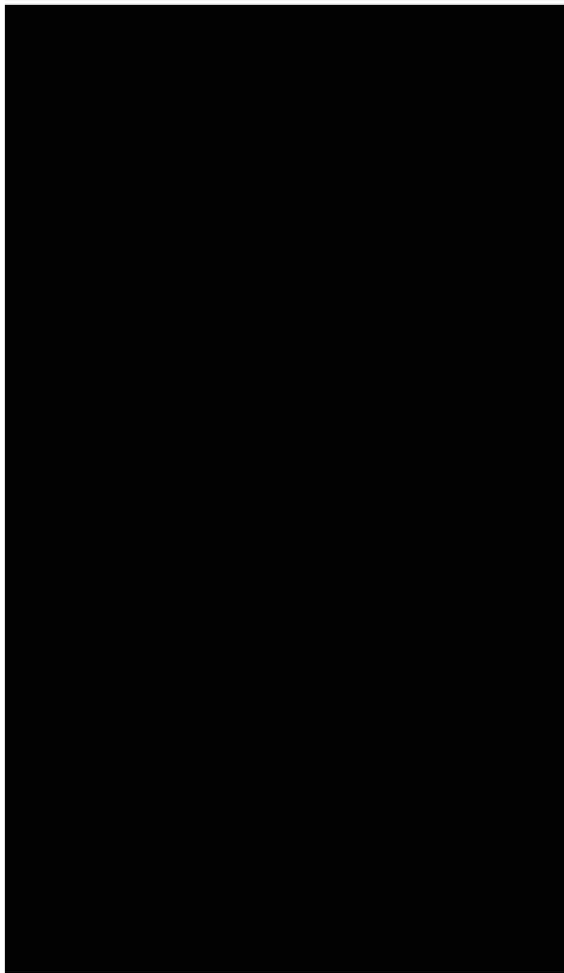
34. Noting the significance of the Public Service Management Bill, the Premier requested that Members receive a copy two to three weeks in advance of the paper to allow for adequate time to review the contents before being discussed at the Cabinet level.
35. The Chairman suggested consultation with the Public Service, as stakeholders as a first step when the Bill is drafted.
36. The Minister for HSD asked what the process would be for the Caucus to be briefed on upcoming legislation in advance of being introduced in the House. The Premier said his policy agenda could be discussed with the backbenchers but that they would not have sight of Cabinet papers from the Governor and the AG.
37. The Chairman stressed the need to get the Integrity in Public Life Bill right. It was not just about passing legislation but that the effectiveness of the implementation phase was important.

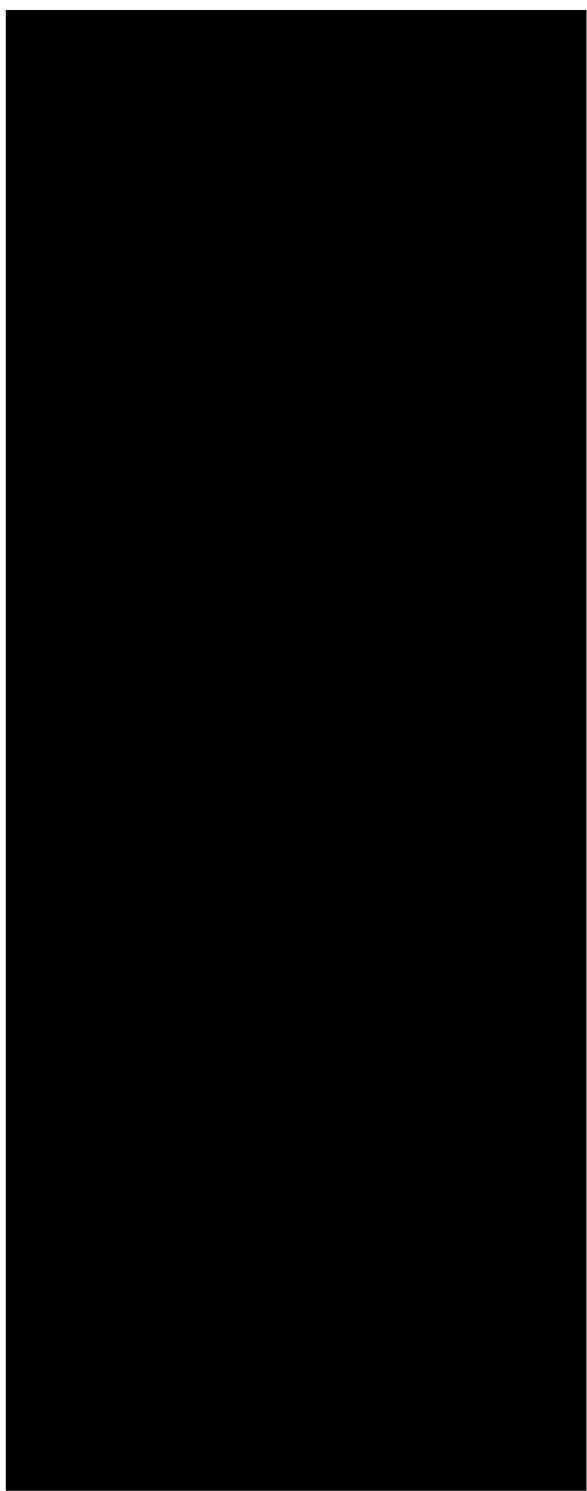
Decision Sought

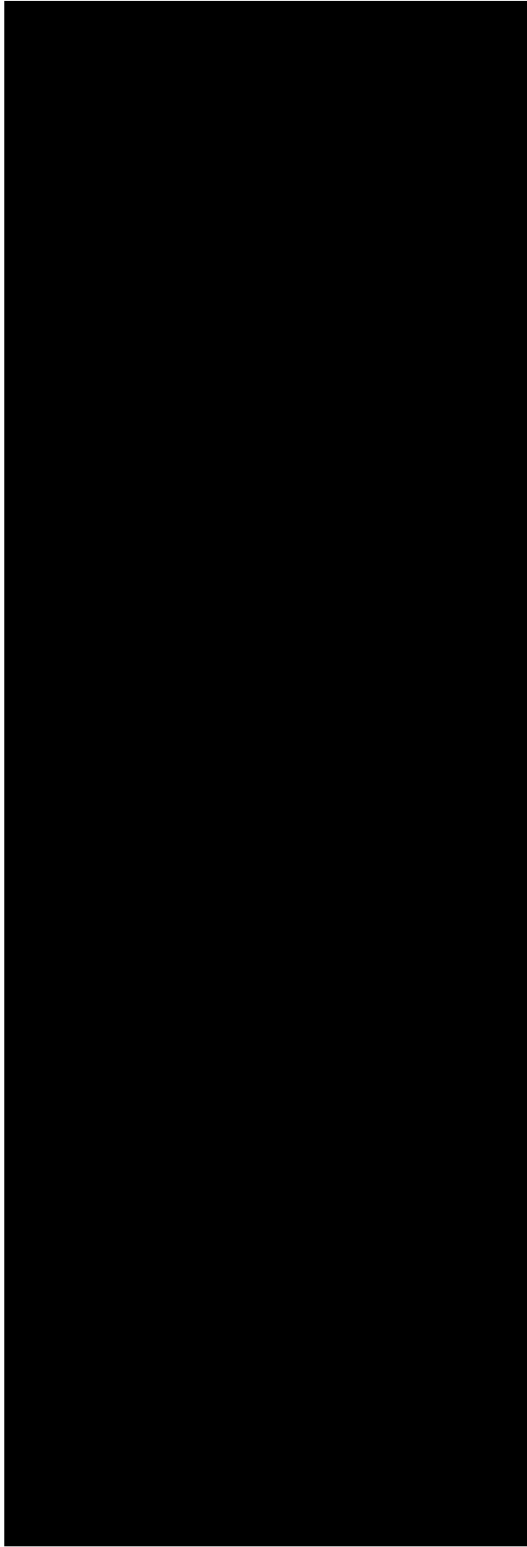
38. Cabinet:

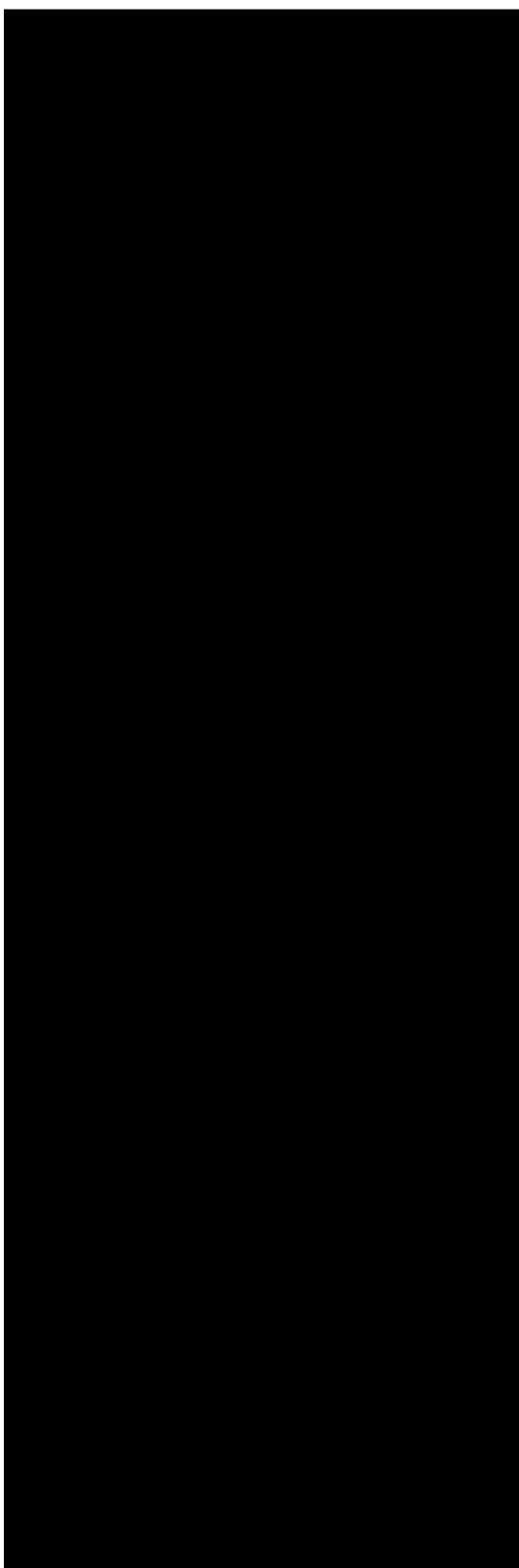
- a. reviewed and approved the draft Integrity in Public Life Policy that aims to promote and enhance standards of ethical conduct for public officers, legislators and Statutory Agencies and State Owned Enterprises;
- b. decided that the Bill, entitled Integrity in Public Life, 2003 be reviewed in line with the policy and incorporate a review of the Register of Interests and Complaints Commission Acts;
- c. decided that the Deputy Governor's Office instruct the Attorney General's Chambers to draft the new Bill;
- d. agreed that the Bill would be forwarded to the House of Assembly to be introduced for its first reading; and
- e. decided that an expedited extract be issued to allow the

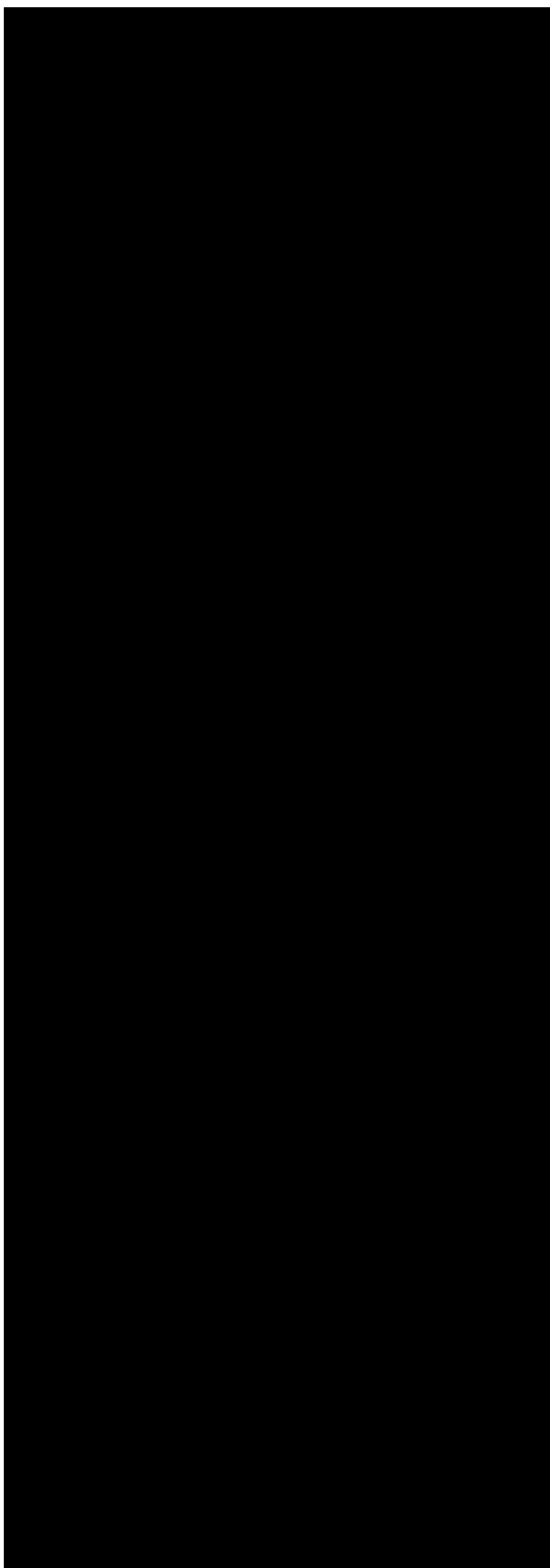
decision of the
Cabinet to be acted
upon before the
confirmation of the
Minutes.









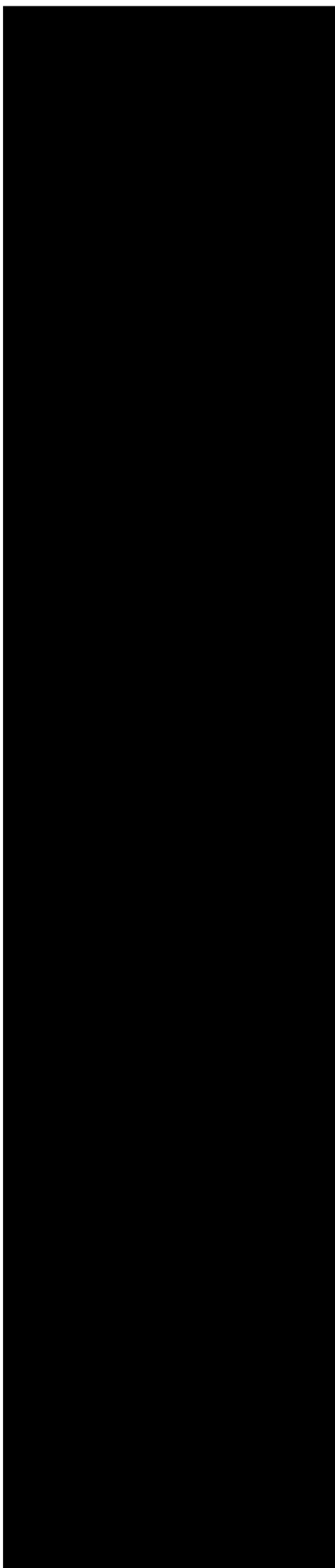





Decision Sought


65. Cabinet noted:






Confirmation and Signing of the Minutes

Minutes for meeting No. C/2/MEET/28/2019 (/minutes/38)  (/minutes/40/minute_items/1745)
were confirmed.

Minutes for meeting No. C/2/MEET/29/2019 (/minutes/39)  (/minutes/40/minute_items/1744)
were confirmed.

Adjournment

 (/minutes/40/minute_items/1760/edit) The Chairman adjourned the meeting at 6:55 p.m.

Ms. Sandra Ward
Cabinet Secretary
18 November 2019

**IN THE MATTER OF THE TERRITORY OF THE VIRGIN ISLANDS
COMMISSION OF INQUIRY 2021
AND THE COMMISSION OF INQUIRY ACT (CAP 237)**

**ATTORNEY GENERAL’S RESPONSE TO ENUMERATED QUESTIONS IN MR
KING’S LETTER OF 19 MAY 2021 IN RESPECT THE LEGISLATIVE
PROGRAMME ON GOVERNANCE**

INTRODUCTION

1. On 19 May 2021 Mr King wrote to the Attorney General referring to the Premier’s evidence that his administration was bringing forward measures to strengthen governance in the Virgin Islands.
2. Mr King indicated that it would be helpful to the Commissioner to understand the measures that are being brought forward.
3. The Commissioner referred to the following measures in particular (“**the Measures**”), identified to the Commission of Inquiry (“**COI**”) by the Deputy Governor as currently receiving attention:
 - (a) The Integrity in Public Life Bill
 - (b) The Whistleblowers Bill
 - (c) The Contractor General Bill

(d) The Proceeds of Criminal Conduct (Amendment) (No 2) Bill

(e) The Register of Interests (Amendment) (No 2) Bill

(f) The Procurement Bill

(g) The Ministerial Code of Conduct

(h) The Public Service Management [Bill/Code]

4. Mr King asked that I provide information about the timetable including:

(i) When such a measure was first contemplated;

(ii) When the Attorney General's Chambers were requested to prepare the draft Bill;

(iii) When the draft Bill was finalised and if appropriate, sent round for consultation;

(iv) When the Bill was introduced to the House of Assembly;

(v) Any remarks made in the House of Assembly by the Minister responsible for the Bill;

(vi) If appropriate, when the Bill was referred to any Select Committee;

(vii) When the Bill received any readings in the House of Assembly;

(viii) When the Bill was passed (or is expected to be passed) by the House of Assembly;

(ix) When it is expected that assent for the Bill will be received;

(x) When it is expected that the Bill will become law.

5. Mr King also asked that where in respect of any measure or Code set out above, its subject matter or similar subject matter has been considered as part of a measure introduced by a previous administration that I provide the same timetable.
6. Mr King finally asked that the current version of the (draft) measure be provided, with any later and final drafts to be provided in due course.
7. In Section I I make some preliminary observations about our approach to this task. In Section II I set out the answers to questions (i) to (x).
8. The draft and finalised measures are attached as Annex A.

I. PRELIMINARY OBSERVATIONS

9. The answers to the questions should not be considered definitive. I have provided such answers as we have been able to, in the limited timeframe available to us, bearing in mind that the records are not as well ordered as one might have hoped.
10. In answering question (i) we have given an indication of historic steps taken, but we have not yet had sufficient time to compile timetables in respect of historic measures. That remains a work in progress.
11. With respect to Question (iii), it should be noted that further drafting and finalisation can take place after the first reading of a Bill.
12. Questions (viii), (ix) and (x) seek predictions as to when the Measures are “*expected*” respectively to be passed receive assent and become law. Where possible, for example where a Bill has been specifically tabled before the House of Assembly for readings on specific dates, we have given what we hope is a realistic indication. But such predictions are necessarily subject to a multiplicity of factors, beyond our control, which include demands on the time of the House of Assembly to deal with events as they arise, especially in these challenging times.
13. It should be borne in mind that the Attorney General’s Chambers had, by late 2020 only two remaining drafters, out of a usual compliment of five, to cope with the Government’s ambitious legislative programme.

II. THE MEASURES

14. We have followed the order in which the Measures were referred to in Mr King's letter. We have added the numbering (a) to (h).

(a) The Integrity in Public Life Bill

(i) When such a measure was first contemplated

15. Attempts began to introduce Public Service Integrity Legislation to the Virgin Islands in the 1990s. A draft Integrity in Public Life Bill was presented for the consideration of the Legislative Council on 17 May 2001.

(ii) When the Attorney General's Chambers were requested to prepare the draft Bill

16. The Attorney General's Chambers received instructions from the Government to prepare the draft Bill on 28 November 2019.

(iii) When the draft Bill was finalised and if appropriate, sent round for consultation

17. Drafting and consideration of the Bill took place between 15 June 2020 and 30 March 2021, when a final draft was forwarded to the Premier's Office. Consultation on the Bill took place between 19 and 26 May 2021.

(iv) When the Bill was introduced to the House of Assembly

18. The Bill received its first reading on 22 April 2021.

(v) Any remarks made in the House of Assembly by the Minister responsible for the Bill

19. The Bill has not yet been debated, as it had not yet had its second and third reading.

(vi) If appropriate, when the Bill was referred to any Select Committee

20. This has not taken place.

(vii) When the Bill received any readings in the House of Assembly

21. The second and third readings have not yet taken place.

(viii) When the Bill was passed (or is expected to be passed) by the House of Assembly

22. This has not yet taken place. The Bill has not yet been tabled for its second and third readings.

(ix) When it is expected that assent for the Bill will be received

23. It is expected that assent will be received shortly after the Bill is passed in the House of Assembly.

(x) When it is expected that the Bill will become law

24. Shortly thereafter.

(b) The Whistleblower Bill

(i) When such a measure was first contemplated

25. A Public Service Management Bill, developed in between 2010 and 2017, contained Whistleblower provisions. The current Government's election manifesto also included enacting new Whistleblower Legislation.

(ii) When the Attorney General's Chambers were requested to prepare the draft Bill

26. A verbal request with no formal instructions was made in 2019.

(iii) When the draft Bill was finalised and if appropriate, sent round for consultation

27. A final draft Bill was produced by the Attorney General's Chambers on 3 May 2021. Consultation had taken place between 3 and 5 May 2021. Further work was done on the draft Bill in late May considering further comments including from the Premier's Office.

(iv) When the Bill was introduced to the House of Assembly

28. The Bill received its first reading on 4 March 2021.

(v) Any remarks made in the House of Assembly by the Minister responsible for the Bill

29. The Bill has not yet been debated as it has not yet had its second and third reading.

(vi) If appropriate, when the Bill was referred to any Select Committee

30. This has not taken place.

(vii) When the Bill received any readings in the House of Assembly

31. The Bill has not yet received its second and third readings.

(viii) When the Bill was passed (or is expected to be passed) by the House of Assembly

32. This has not yet taken place. However, the Whistleblower Act is expected to be passed on 15 June 2021.

(ix) When it is expected that assent for the Bill will be received

33. It is expected that assent will be received shortly after the Bill is passed in the House of Assembly.

(x) When it is expected that the Bill will become law

34. Shortly thereafter.

(c) The Contractor General Bill

(i) When such a measure was first contemplated

35. The strengthening of public procurement by the introduction of Contractor General legislation was a policy upon which the present Government campaigned in the 2019 election.

(ii) When the Attorney General's Chambers were requested to prepare the draft Bill

36. Instructions were received on 12 June 2020.

(iii) When the draft Bill was finalised and if appropriate, sent round for consultation

37. A draft Bill was finalised on 21 August 2020. A further draft was produced on 3 May 2021. Consultations took place between 3 and 5 May 2021. Further work took place on the drafting, including considering comments received from stakeholders, during late May 2021.

(iv) When the Bill was introduced to the House of Assembly

38. The Bill received its first reading on 4 March 2021.

(v) Any remarks made in the House of Assembly by the Minister responsible for the Bill

39. The Contractor General Bill received its Second Reading on 13 May 2021. The transcript of the Debate is not yet available. When it becomes available an Annex will be provided. In the meantime the debate can be found at https://www.youtube.com/watch?v=7T-NHdVZ_2I (from 8:12 hours into the session).

(vi) If appropriate, when the Bill was referred to any Select Committee

40. This has not taken place.

(vii) When the Bill received any readings in the House of Assembly

41. The Bill has received its second reading on 13 May 2021.

(viii) When the Bill was passed (or is expected to be passed) by the House of Assembly

42. This has not yet taken place. However, the Bill is expected to be passed on 15 June 2021.

(ix) When it is expected that assent for the Bill will be received

43. It is expected that assent will be received shortly after the Bill is passed in the House of Assembly.

(x) When it is expected that the Bill will become law

44. Shortly thereafter.

(d) The Proceeds of Criminal Conduct (Amendment) (No 2) Bill

45. The Proceeds of Criminal Conduct (Amendment) Act was passed on 11 May 2021. It was drafted by the Financial Services Commission. The answers given below concern the Proceeds of Criminal Conduct (Amendment) (No.2) Bill, about which I have been asked and which deals with unexplained wealth orders.

(i) When such a measure was first contemplated

46. It is believed that the measures in respect of unexplained wealth orders were first contemplated in 2019.

(ii) When the Attorney General's Chambers were requested to prepare the draft Bill

47. A verbal request was received from the former Governor to the former Attorney General in 2019.

(iii) When the draft Bill was finalised and if appropriate, sent round for consultation

48. The draft Bill was finalised on 13 April 2021, after comments received from the Governor's Group had been considered.

(iv) When the Bill was introduced to the House of Assembly

49. The Bill has not yet been introduced to the House of Assembly.

(v) Any remarks made in the House of Assembly by the Minister responsible for the Bill

50. The Bill has not yet been introduced to the House of Assembly.

(vi) If appropriate, when the Bill was referred to any Select Committee

51. This has not taken place.

(vii) When the Bill received any readings in the House of Assembly

52. The Bill has not yet been introduced to the House of Assembly.

(viii) When the Bill was passed (or is expected to be passed) by the House of Assembly

53. The drafting process has not yet been completed.

(ix) When it is expected that assent for the Bill will be received

54. It is expected that assent will be received shortly after the Bill is passed in the House of Assembly.

(x) When it is expected that the Bill will become law

55. Shortly thereafter.

(e) The Register of Interests (Amendment) Bill

56. The answers in this section are with respect to the Register of Interests Bill, 2021 and the Register of Interests (Amendment) Act 2021. There has never been a bill entitled the Register of Interests (Amendment) (No.2) Act, 2021.

(i) When such a measure was first contemplated

57. On 18 September 2020 the Deputy Governor's Office sent a Memo to the Attorney General following discussions on strengthening the existing provisions on enforcement and accountability in the Register of Interests Act 2006.

(ii) When the Attorney General's Chambers were requested to prepare the draft Bill

58. On 18 September 2020 instructions to prepare the Register of Interests (Amendment) Bill were received. On 4 November 2020 the Attorney General's Chambers sent the Draft Register of Interests (Amendment) Bill to the Deputy Governor's Office for review and consideration. On 3 December 2020 instructions were received from the Deputy Governor's Office to prepare drafting for the repeal and replacement of the Register of Interests Act 2006. The draft Bill was thereafter known as the Register of Interests Bill 2020 and thereafter the Register of Interests Bill 2021.

59. Between 1 and 3 March 2021 the Attorney General's Chambers were instructed to and did draft a Register of Interests (Amendment) Bill 2021, to facilitate disclosure to the COI.

(iii) When the draft Bill was finalised and if appropriate, sent round for consultation

60. The Register of Interests (Amendment) Bill 2021 referred to at paragraph 59 above, was finalised by 3 March 2021.

61. The Register of Interests Bill 2021 has not yet been finalised.

(iv) When the Bill was introduced to the House of Assembly

62. The Register of Interests (Amendment) Bill 2021 was introduced to the House of Assembly on 4 March 2021.

63. In respect of the Register of Interests Bill 2021, this has not yet taken place.

(v) Any remarks made in the House of Assembly by the Minister responsible for the Bill

64. The transcript of the Debate of the Register of Interests (Amendment) Bill 2021 is not yet available. When it becomes available an Annex will be provided. In the meantime the debate can be found at <https://www.youtube.com/watch?v=2ggb2nMFRNI> (from 1:2 hours into the session).

65. The Register of Interests Bill 2021 has not yet been debated as it has not yet been introduced to the House of Assembly.

(vi) If appropriate, when the Bill was referred to any Select Committee

66. This has not taken place in respect of either piece of legislation.

(vii) When the Bill received any readings in the House of Assembly

67. The Register of Interests (Amendment) Bill 2021 received its second and third readings on 4 March 2021.

68. The Register of Interests Bill 2021 has not yet been introduced to the House of Assembly.

(viii) When the Bill was passed (or is expected to be passed) by the House of Assembly

69. The Register of Interests (Amendment) Act 2021 was passed on 4 March 2021.

70. The drafting process in respect of the Register of Interests Bill 2021 has not yet been completed.

(ix) When it is expected that assent for the Bill will be received

71. Assent was received in respect of the Register of Interests (Amendment) Act 2021 on 12 March 2021.

(x) When it is expected that the Bill will become law

72. Shortly thereafter.

(f) The Procurement Bill

(i) When such a measure was first contemplated

73. Cabinet considered the contents of a proposed Procurement Bill in May 2018.

(ii) When the Attorney General's Chambers were requested to prepare the draft Bill

74. Instructions were received on 3 August 2018.

(iii) When the draft Bill was finalised and if appropriate, sent round for consultation

75. A draft Public Procurement Bill was produced by the Attorney General's Chambers on 18 September 2019. Further drafts were produced by the Charles Kendall Group in

April 2020 and in May 2021. A final draft was produced by the Attorney General's Chambers on 25 May 2021.

(iv) When the Bill was introduced to the House of Assembly

76. This has not taken place.

(v) Any remarks made in the House of Assembly by the Minister responsible for the Bill

77. The Bill has not yet been debated as it has not yet been introduced to the House of Assembly.

(vi) If appropriate, when the Bill was referred to any Select Committee

78. This has not yet taken place.

(vii) When the Bill received any readings in the House of Assembly

79. This Bill has not yet been introduced to the House of Assembly.

(viii) When the Bill was passed (or is expected to be passed) by the House of Assembly

80. The drafting process has not yet been completed.

(ix) When it is expected that assent for the Bill will be received

81. It is expected that assent will be received shortly after the Bill is passed in the House of Assembly.

(x) When it is expected that the Bill will become law

82. Shortly thereafter.

(g) The Ministerial Code of Conduct

83. The Ministerial Code of Conduct was not drafted by the Attorney General's Chambers. It was progressed by a Working Committee appointed by Cabinet.

(i) When such a measure was first contemplated

84. A draft Ministerial Code was developed and presented to Cabinet for consideration on 26 September 2018.

(ii) When the Attorney General's Chambers were requested to prepare the draft Bill

85. The Attorney General's Chambers were not so instructed. However the former Attorney General reviewed comparative Ministerial Codes in late 2018. In April 2020 a Working Group was established by order of the Cabinet to make recommendations in respect of the drafting of the Ministerial Code.

(iii) When the draft Bill was finalised and if appropriate, sent round for consultation

86. The recommendations of the Working Group established to draft the Ministerial Code were placed before Cabinet on 25 March 2021 and approved in draft. Cabinet approval to the final draft was given on 15 April 2021.

(iv) When the Bill was introduced to the House of Assembly

87. No Bill was presented, but a Report was tabled on 15 April 2021.

(v) Any remarks made in the House of Assembly by the Minister responsible for the Bill

88. There has been no debate yet in respect of the Ministerial Code.

(vi) If appropriate, when the Bill was referred to any Select Committee

89. Not Applicable. A Code not a Bill has been drafted. This amounts to a policy document, not a piece of legislation.

(vii) When the Bill received any readings in the House of Assembly

90. Not Applicable. A Code not a Bill has been drafted.

(viii) When the Bill was passed (or is expected to be passed) by the House of Assembly

91. Not Applicable. As above.

(ix) When it is expected that assent for the Bill will be received

92. Not Applicable. As above.

(xi) When it is expected that the Bill will become law

93. Not Applicable. As above.

(h) The Public Service Management Bill/Code

94. Between June and August 2020, consideration was given to transforming the draft Public Service Management Bill into a Code. The decision to develop a Code was taken in December 2020.

(i) When such a measure was first contemplated

95. The Department for Human Resources initiated a review of employment practices and procedures in the Public Service between 2010 and 2017 and produced a Public Service Management Bill Briefing Report. However, as indicated above, the Code was first contemplated in December 2020.

(ii) When the Attorney General's Chambers were requested to prepare the draft Bill

96. The Department of Human Resources requested a review of a draft Public Service Management Code, on 9 December 2020, without attaching a draft. The draft Code was eventually received by the Attorney General's Chambers on 15 March 2021.

(iii) When the draft Bill was finalised and if appropriate, sent round for consultation

97. The Attorney General's Chambers are still working on the draft Code.

(iv) When the Bill was introduced to the House of Assembly

98. This has not yet taken place.

(v) Any remarks made in the House of Assembly by the Minister responsible for the Bill

99. A Code not a Bill is currently being progressed.

(vi) If appropriate, when the Bill was referred to any Select Committee

100. Not Applicable

(vii) When the Bill received any readings in the House of Assembly

101. Not Applicable. No Bill has been introduced to the House of Assembly. A Code not a Bill is currently being progressed

(viii) When the Bill was passed (or is expected to be passed) by the House of Assembly

102. Not Applicable. A Code not a Bill is currently being progressed. The drafting process on the Code has not yet been completed.

(ix) When it is expected that assent for the Bill will be received

103. Not Applicable. A Code not a Bill is currently being progressed.

(x) When it is expected that the Bill will become law

104. Not Applicable. A Code not a Bill is currently being progressed.

3 June 2021

**IN THE MATTER OF THE TERRITORY OF THE VIRGIN ISLANDS COMMISSION
OF INQUIRY 2021
AND THE COMMISSION OF INQUIRY ACT (CAP 237)**

**ATTORNEY GENERAL'S RESPONSE TO ENUMERATED QUESTIONS IN
MR KING'S LETTER OF 19 MAY 2021 IN RESPECT THE LEGISLATIVE
PROGRAMME ON GOVERNANCE**

Updated 10th February, 2022

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No. 43 of 2021

VIRGIN ISLANDS
INTEGRITY IN PUBLIC LIFE ACT, 2021
ARRANGEMENT OF SECTIONS

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No. 43 of 2021

Integrity in Public Life Act, 2021

Virgin
Islands

I Assent

Governor.

, 2021

VIRGIN ISLANDS

No. 43 of 2021

An Act to make provision for the establishment of an Integrity Commission, to make provision for the promotion and enhancement of ethical conduct of persons in public life, and for other matters connected therewith.

[Gazetted , 2021]

ENACTED by the Legislature of the Virgin Islands as follows:

**PART I
PRELIMINARY**

1. (1) This Act may be cited as the Integrity in Public Life Act, 2021.

Short title and
commencement.

(2) This Act shall come into force on such date as the Minister may, by Notice published in the *Gazette*, appoint.

2. In this Act, unless the context otherwise requires,

Interpretation.

“Commission” means the Integrity Commission established by section 4;

“Cabinet” means the Cabinet established under section 47 of the Virgin Islands Constitutional Order, 2007;

“Disciplinary Tribunal” means a tribunal appointed pursuant to section 7;

“family” means

(a) the spouse of a public official; and

(b) the dependent child of a public official, whether a minor or not, who is being maintained by the public official;

“functions” includes powers and duties;

“investigator” means a person appointed by the Commission under section 13 to investigate a complaint;

“Minister” means the Minister to whom responsibility for the subject of this Act is assigned;

“person in public life” means a person referred to in the Schedule 1;

“property” means any land and any interest in land, money, stock, bonds, shares or any other movable, immovable, corporeal or incorporeal things having economic value whether situated in the Virgin Islands or elsewhere and includes any rights, privileges, claims, securities and any interest herein all proceeds thereof;

“public body” includes

- (a) the House of Assembly and Cabinet;
- (b) Ministries and Departments of Government;
- (c) a corporation established by an Act for a public purpose or any subsidiary company of that corporation;
- (d) a bank, corporation or company which the Government owns or in which the Government has controlling interest;
- (e) any board, authority, commission, committee, council, trust or other like body established by or under an enactment;

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

“public official” means a person who is a member of a public body or a public officer.

Application of
Act.

3. This Act applies to all persons in public life.

PART II INTEGRITY COMMISSION

4.(1) There is established a Commission to be known as the Integrity Commission. Establishment of Commission.

(2) In the performance of its functions under this Act, the Commission shall not be subject to the direction or control of any other person or authority.

(3) The Commission shall comprise of five persons as follows

- (a) a Chairperson who is a retired judge or an attorney at law of at least fifteen years standing, and who has practiced in the Virgin Islands or within the jurisdiction of the Organisation of the Eastern Caribbean States;
- (b) one person selected by the Governor;
- (c) one person nominated by the Premier;
- (d) one person nominated by the Leader of Opposition; and
- (e) one person nominated by the BVI Christian Council.

(4) The appointment of the members of the Commission shall be made by the Governor.

(5) The Chairperson shall be appointed by the Governor in agreement with the Premier who shall first consult the Leader of the Opposition.

(6) A person appointed to the Commission shall be a person of high integrity, capable of exercising competence, diligence, sound judgment and impartiality in fulfilling his or her duties pursuant to this Act.

(7) A person shall not be qualified to be appointed as a member of the Commission if that person

- (a) is a person in public life or is otherwise exercising a public function;
- (b) has, at any time during the three years preceding the date of appointment, been a person in public life or otherwise exercised a public function;

- (c) has, at any time during the five years immediately preceding the date of appointment, held office in a political party;
- (d) would otherwise be disqualified, in accordance with the Constitution, to be a member of the House of Assembly.
- (e) has been convicted of an offence within or outside the Virgin Islands;
- (f) is an undischarged bankrupt or has compounded with his or her creditors;
- (g) is not a Belonger; or
- (h) has been certified by a medical practitioner to be of unsound mind.

Functions of the
Commission.

5. (1) The Commission shall

- (a) receive and investigate complaints regarding any breaches or non-compliance with the provisions of this Act;
- (b) without prejudice to the provisions of any other enactment, conduct an investigation into corruption under this Act referred to it by any person;
- (c) make recommendations and to advise public bodies of any changes in practices and procedures which, in the opinion of the Commission, will reduce the likelihood or the occurrence of acts of corruption;
- (d) conduct educational programmes and training relating to the role of the Commission in promoting ethical conduct;
- (e) perform such other functions or exercise such powers as may be conferred on it under this Act or any other enactment.

(2) The Commission may appoint a professional or technical adviser to assist the Commission in the performance of its functions.

(3) Persons appointed under subsection (2) may be paid such remuneration as the Commission may approve.

(4) Any remuneration payable pursuant to subsection (3) shall be paid out of the funds of the Commission.

6. (1) A member of the Commission shall be appointed by an instrument in writing and shall, subject to this Part, hold office for a period not exceeding five years and shall be eligible for re-appointment. Tenure of, and removal from, office.

(2) A member shall be removed from office by the Governor if the question of his or her removal from office has been referred to a Disciplinary Tribunal appointed pursuant to section 7(1) and the Disciplinary Tribunal has recommended to the Governor that he or she ought to be removed for inability or unwillingness to discharge the functions of his or her office or for misbehavior or other good cause.

7. (1) Where the Governor, after consultation with the Premier and the Leader of the Opposition, considers that the question of removing a member of the Commission ought to be investigated, the Governor shall appoint a disciplinary tribunal which shall consist of three persons including a religious leader, a Judge of the High Court, or an attorney at law of fifteen years standing who has practiced in the Virgin Islands or within the jurisdiction of the Organisation of the Eastern Caribbean States. Disciplinary Tribunal.

(2) The Disciplinary Tribunal shall inquire into the matter and report on the facts thereof to the Governor and recommend to him or her whether the member should be removed from office.

(3) The Disciplinary Tribunal appointed under subsection (1) shall give the member an opportunity to show cause why he or she should not be removed from office.

(4) Where the question of removing a member has been referred to a Disciplinary Tribunal under this section, the Governor, after consultation with the Premier and the Leader of the Opposition, may suspend the member from the exercise of the functions of his or her office pending the hearing and determination of the matter.

(5) A suspension may, at any time, be revoked by the Governor and shall in any case cease to have effect if the Disciplinary Tribunal recommends to the Governor that the member should not be removed.

8. (1) A member of the Commission, other than the Chairperson, may at any time resign his or her office by giving one month's notice in writing addressed to the Governor and transmitted through the Chairperson. Resignation of Members.

(2) The Chairperson may, at any time, resign his or her office by giving three months' notice in writing addressed to the Governor.

9. (1) A vacancy in the Commission shall be filled in the same manner as set out in section 4(3) within thirty days of any such vacancy arising. Vacancy in membership of Commission.

- (2) A vacancy in the membership of the Commission shall occur
 - (a) on the absence of a member from three consecutive meetings of the Commission, unless that absence is approved by the Chairperson in writing;
 - (b) at the expiration of five years from the date of the appointment of a member;
 - (c) on the death, resignation or revocation of the appointment, of a member;
 - (d) if the member is appointed as a public officer; or
 - (e) if the member is nominated as a candidate for election as a representative in the House of Assembly or is appointed the Speaker of the House of Assembly.

Publication in the
Gazette.

10. The appointment, resignation, revocation, removal, or the death of a member of the Commission shall be published in the *Gazette*.

Meetings and
Proceedings of
Commission.

11. (1) The Commission shall meet at such times as may be expedient for the Commission to carry out its functions.

(2) A quorum of the Commission shall be three.

(3) At every meeting of the Commission the Chairperson shall preside, and in his or her absence the members present shall nominate one of their members to preside.

(4) The proceedings of the Commission shall not be affected by any vacancy amongst any of its members or by any defect in the appointment of any member.

Secretary of the
Commission.

12. (1) The Commission shall appoint a Secretary to the Commission who shall

- (a) attend meetings of the Commission;
- (b) record the minutes of each meeting in proper form;
- (c) record the testimony of persons summoned to appear before the Commission; and

- (d) generally perform the duties connected with the work of the Commission and as directed by the Commission.

(2) A Secretary appointed pursuant to subsection (1) shall hold office for a period not exceeding four years.

(3) The Commission shall determine and specify the qualifications of the Secretary.

13. (1) Subject to subsection (2), the Commission may, to the extent and on the conditions it considers necessary to carry out its functions, Staff of the Commission.

- (a) employ staff, whether full or part time; and
- (b) engage on contract professional, technical or other assistance.

(2) The Commission shall ensure that members of its staff or persons appointed as investigators are qualified to do so

- (a) by virtue of previous employment; or
- (b) after undergoing suitable training.

PART III INVESTIGATION POWERS OF THE COMMISSION

14. The Commission shall hold such inquiries and conduct such investigations as it considers necessary in relation to any alleged corruption or a breach of any other provisions of this Act. Power of the Commission to hold inquiry.

15. (1) Any person who wishes to allege or make a complaint that a person in public life or any other person exercising a public function is in breach of this Act may do so in writing to the Commission. Complaints.

- (2) The complaint shall specify
 - (a) the person against whom the complaint is made;
 - (b) the details of the alleged act committed under this Act; and
 - (c) such other particulars as may be prescribed.

(3) The complaint may be made in writing to the Commission or orally before a member of staff designated to receive such complaints.

(4) Where a person makes an oral complaint pursuant to subsection (3), the complaint shall be reduced to writing by the person receiving the complaint and the complainant shall affix his or her signature or mark, as the case may be, to the record.

(5) Where a person wishes to make a complaint of any breach of this Act against any person exercising a public function but who is not subject to this Act, the Commission may assist the complainant to prepare the complaint and shall forward the complaint to the relevant regulatory or disciplinary body to which the person against whom the complaint is being made, is subject, whether in or out of the Virgin Islands.

(6) Any person who knowingly and mischievously makes or causes to be made a false report to the Commission or misleads the Commission by giving false information or by making false statements or accusations commits an offence and is liable on conviction to a fine not exceeding twenty thousand dollars or to imprisonment for a term not exceeding three years or both.

Investigation of
complaints.

16. (1) The Commission may, for the purposes of investigating complaints, require, by notice in writing, any person to supply information to it or produce a document or thing within a specified time.

(2) Where a notice has been issued pursuant to subsection (1), and the relevant person has failed to supply the information or produce the document or thing within the specified time, an investigator may, upon production of his or her official Identification Card, enter public premises occupied or used by a public body for the purposes of

- (a) searching for the document or thing kept on the premises;
- (b) inspecting the document or other thing kept on the premises;
and
- (c) taking copies of the relevant document found on the premises.

(3) The public body concerned shall make available to the investigator any facilities necessary to enable the investigator to exercise his or her powers under subsection (2).

(4) Where a notice has been issued pursuant to subsection (1) and the relevant person has failed to supply the information or produce the document or thing within the specified time and the investigator reasonably believes that such document or thing is necessary in furtherance of the investigation and is located in private premises, the investigator shall seek a warrant for the purpose of entering those private premises.

(5) Upon being granted the warrant pursuant to subsection (4) the investigator may enter the premises, accompanied by the person to whom the notice under subsection (1) was issued and any other person named in the warrant for the purposes of

- (a) searching for the document or thing kept on the premises;
- (b) inspecting the document or other thing kept on the premises;
- (c) taking copies of the relevant document found on the premises and

subsection (3) shall apply to the owner or occupier of the premises.

17. (1) The Commission shall, in the performance of its functions to investigate complaints, have the power to

Power to
summon and
examine
witnesses.

- (a) summon and examine witnesses;
- (b) administer oaths and affirmations, and receive evidence;
- (c) compelling the production of such books, records, papers and documents as it may consider necessary or proper for any proceeding, investigation or hearing held by it;
- (d) require that any document submitted to the Commission be verified by affidavit; and
- (e) request to examine witnesses abroad.

(2) The form for the summons of the attendance of a witness or any other person or the production of documents shall be in the Form set out in Schedule 2.

18. The Commission shall not conclude that a public official has breached this Act, until reasonable notice has been given to the public official concerned and that public official has been allowed full opportunity to make representations in person or by an attorney-at-law before the Commission.

Right to be
heard.

19. (1) Where the Commission is satisfied, on the basis of an inquiry conducted pursuant to this Act that

Referral of
matters.

- (a) a breach of any provision of this Act has been committed, it shall take such actions as it deems fit; or
- (b) an offence has been committed, it shall

- (i) forthwith refer the matter to the Director of Public Prosecutions together with a report of its findings; and
- (ii) forward to the Governor, Premier, and Cabinet a report of its findings.

(2) Where the Commission determines that the subject matter of an inquiry under this Act is

- (a) under investigation by the police or that a charge has been laid; or
- (b) the subject matter of any proceedings in a court of law

the Commission shall hold its own inquiry in abeyance, pending the final disposition of that investigation and the court proceedings.

Non-suspects not to object to supplying information, etc.

20. (1) A person, other than a suspect, may not object to supplying or producing any information, document or thing pursuant to section 16(1) on the grounds that it might tend to incriminate him or her.

(2) Where an objection is made, and the information, document or thing does tend to incriminate the person

- (a) the fact that the requirement was made pursuant to section 16(1); and
- (b) the objection, information, document or thing supplied

shall not be mentioned or used in any proceedings against that person.

(3) In this section, “suspect” means a person whom the investigator reasonably believes to have committed an offence under this Act, whether or not the person has been charged with that offence.

Obstruction of investigation.

21. A person in public life or any other person who

- (a) obstructs or fails to assist an investigator who is duly authorised to carry out the powers conferred on him or her under section 16; or
- (b) gives false or misleading information to the investigator or the Commission

commits an offence and is liable, on conviction, to a fine not exceeding fifteen thousand dollars or to a term of imprisonment not exceeding two years.

PART IV CONDUCT IN PUBLIC LIFE

22. (1) Subject to subsection (2), a person in public life shall observe, abide and conduct himself or herself in accordance with the Code of Conduct set out in Schedule 3, and to such other code of conduct as may be prescribed in relation to the conduct of public officials. Code of Conduct.

(2) Notwithstanding subsection (1), the Governor may prescribe, by regulations, such code of conduct with respect to public officers as the Governor considers fit.

(3) A person in public life shall, within the prescribed period of taking office, sign a copy of the relevant Code of Conduct and the Commission shall keep the signed copy of the said Code of Conduct.

23. (1) A person in public life shall ensure that he or she performs his or her functions and administers the public resources for which he or she is responsible in an effective and efficient manner and shall Use of office and conflict of interests.

- (a) be fair and impartial in exercising his or her public duty;
- (b) afford no undue preferential treatment to any group or individual; and
- (c) arrange his or her private interests, whether pecuniary or otherwise, in such a manner as to maintain public confidence and trust in his or her integrity.

(2) A person in public life shall not

- (a) use his or her office for the improper advancement of his or her own or his or her family's personal or financial interests or the interest of any person;
- (b) accept any position or have any commercial or other interest that is in conflict with his or her office, function and duty or the execution of his or her duties, or that may be perceived as conflict of interest with his or her office, function and duty or the execution of his or her duties;
- (c) use public property or services for activities not related to his or her official work; and

- (d) directly or indirectly use his or her office for private gain.

Insider
information.

24. A person in public life shall not use information that is gained in the execution of his or her office and which is not available to the general public to further or seek to further his or her private interests.

Influence.

25. A person in public life shall not use his or her office to seek to influence a decision made by another person or public body to further his or her own private interests.

Gifts.

26. (1) A person in public life shall not accept a gift, fee or personal benefit that is connected directly or indirectly with the performance of the duties of his or her office, whether as a reward for any official act done by him or her, or as an inducement for any official act to be done by him or her or otherwise.

(2) Subsection (1) does not apply to

- (a) a gift or a personal benefit in such amount as may be prescribed by Regulations;
- (b) a personal gift received by a person in public life from a relative or friend; or
- (c) an official gift, received as an incident of the protocol or social obligations that normally accompany the responsibilities of office.

(3) Where a person in public life accepts a gift in the circumstances referred to in subsection (2)(c), the person shall make a report to the Commission and, in the case of a public officer to the Deputy Governor, in the prescribed manner and within such period as may be prescribed.

PART V CORRUPTION

Provisions of this
Part in addition
to any other law.

27. The provisions of this Part are in addition to and not in derogation of the provisions of the Criminal Code, any other law or the common law.

Powers of appropriate disciplinary authority preserved.

28. This Part shall be without prejudice to the powers conferred upon the appropriate disciplinary authority by the Constitution.

Acts of corruption.

29. (1) A person in public life commits corruption if he or she

- (a) seeks or accepts personal or private benefit for himself or herself or a member of his or her family or person associated with him or her, whether or not the benefit places him or her under an obligation to the person giving or offering the benefit;
- (b) solicits or accepts, whether directly or indirectly, any article or money or other benefit or advantage for himself or herself or another person for doing any act or omitting to do any act in the performance of his or her functions as a public official;
- (c) offers or gives, directly or indirectly, to a public official any article, money or other benefit or advantage for doing any act or omitting to do any act in the performance of the public official's duties;
- (d) knowingly or recklessly allows his or her private interest to conflict with his or her public duties or improperly influence his or her conduct in the performance of his or her duties as a public official;
- (e) improperly uses for his or her own benefit or for anyone else, any property belonging to the Government or any statutory body or any government controlled company to which he or she has access as a result of or in the course of, the performance of his or her duties;
- (f) acts as an intermediary, or through another person seeks to obtain a decision from any Ministry or Department of the Government or any statutory body or any government-controlled company, in order that he or she may improperly obtain for himself or herself or for another person any benefit or gain;
- (g) improperly influences in support of any scheme or in furtherance of any contract or proposed contract or other matter in regard to which he or she has an interest;

- (h) offers or gives, directly or indirectly to a government official of another State, any gift or money or other benefit, in connection with any economic or commercial transaction for an act to be performed or omitted to be performed by that person in the performance of his or her public duties;
- (i) uses public funds or resources for private purposes, including party political purposes;
- (j) improperly uses for his or her own benefit or for anyone else, information acquired in the course of his or her duties;
- (k) interferes in, or seeks to influence, otherwise than as part of his or her duty, the appointment, promotion, suspension, demotion or dismissal of a person in public life or other person;
- (l) induces or encourages another officer to act contrary to the relevant Code of Conduct; or
- (m) instigates, aids, abets or is an accessory after the fact or participates in the commission or attempted commission of corruption in this section.

(2) A person who commits corruption commits an offence and is liable on conviction to a fine not exceeding thirty thousand dollars or to imprisonment for a term not exceeding five years.

PART VI FINANCIAL PROVISIONS

Funds of the
Commission.

30. The funds of the Commission shall consist of funds as may, from time to time, be appropriated by the House of Assembly and other moneys as may be lawfully received by or made available to the Commission for the purposes of this Act.

Estimates of the
Commission.

31.(1) The Commission shall, on or before the 30th day of September of each year, submit to the Minister for Finance for his or her approval, its estimates of expenditure in respect of the next financial year.

(2) For the purpose of this part “financial year” means the period January 1st to December 31st of each year.

32. The Commission shall keep proper accounts of receipts, payments, assets and liabilities, and those accounts shall be audited annually by the Auditor General or such other Auditor appointed by the Auditor General for that purpose. Accounts and Audits.

33. (1) The Commission shall, in each year and at such time as the Minister shall direct, prepare and forward to the Minister a report of its activities during the previous financial year, including a statement of its accounts audited in accordance with section 32. Annual reports.

(2) A copy of the report together with the Auditor's report shall be laid before the House of Assembly.

PART VII MISCELLANEOUS PROVISIONS

34. No prosecution for an offence under this Act, other than an offence committed under section 21, may be instituted after seven years from the date when the person in public life is alleged to have committed the offence. Prosecutions.

35. (1) A member of the Commission and every person performing any function in the service of, or as an employee of, the Commission shall keep confidential, all information relating to the deliberations, proceedings, and the records of the Commission which he or she has acquired in his or her capacity as a Commissioner or an employee of the Commission, except as required for an inquiry in respect of any matter under this Act, or in respect of a written request from a Commissioner of Inquiry, or on the order of a court of competent jurisdiction. Information not to be communicated to unauthorised persons.

(2) A person who contravenes subsection (1) commits an offence and shall be liable, on summary conviction, to a fine not exceeding ten thousand dollars or to a term of imprisonment not exceeding one year or both.

(3) An authorised person who publishes information which comes to his or her knowledge pursuant to subsection (1) to an unauthorised person commits an offence and is liable on conviction to a fine not exceeding ten thousand dollars or to a term of imprisonment not exceeding one year or both.

(4) For the purpose of this section, an unauthorised person is a person other than a person authorised to receive information under this Act or pursuant to a court order.

36. Members of the Commission and staff of the Commission shall, before assuming the functions of his or her office, take the oath or make the affirmation set out in Schedule 3, to be administered by the Governor. Oath.

Legal representation.

37. A person in public life who is required to attend an inquiry under this Act may be accompanied and represented by a legal practitioner or other representative of his or her choice.

Disclosure of interests in debates and questions.

38. (1) Where a person in public life is a member of the House of Assembly, that person shall, with regard to any matter being debated, or in relation to which he or she intends to ask a question, which is a matter or question in which he or she, his or her spouse or dependent child has a personal interest, disclose that interest to the House of Assembly.

(2) For the purposes of subsection (1), it is immaterial that the person in public life does not intend to participate in the debate of, or ask a question in relation to, the matter before the House of Assembly.

Protection of witnesses.

39. No person summoned as a witness to give evidence before the Commission shall be compelled to incriminate himself or herself and such person shall in respect of any evidence given by him or her before the Commission, be entitled to all the privileges to which a witness giving evidence before the High Court is entitled in respect of evidence given by him or her before such Court.

Immunity from suit.

40. No action shall be brought against the Commission, a Commissioner or a person acting under the direction of the Commission for an act done or omitted to be done in the execution of his or her functions under this Act, unless it is shown that he or she acted in bad faith.

Offences and penalties.

41. (1) A person who

- (a) fails, without reasonable cause, to attend an inquiry being conducted for the purposes of this Act or knowingly gives any false information in such inquiry;
- (b) a person who fails, without reasonable cause, to furnish to the Commission such further particulars which he or she is required to furnish in accordance with this Act;
- (c) knowing or having reasonable grounds to believe that information received by him or her is communicated to him or her in contravention of this Act, fails to notify the Commission of that fact; or
- (d) makes any frivolous or vexatious complaint to the Commission

commits an offence and is liable on summary conviction to a fine not exceeding thirty thousand dollars or to imprisonment for a term not exceeding five years, or both.

(2) A person who aids, abets, or facilitates another person in commission of an offence under subsection (1) commits an offence and is liable on conviction, to the same penalty as provided for in subsection (1).

(3) For the purpose of subsection (1)(c), where evidence shows that the person concerned solicited or induced the communication of the information to him or her, he or she commits an offence whether or not he or she informed the Commission of the receipt of such information.

(4) Where a person is convicted of an offence under section 29, the Court may, in addition to any penalty imposed on him or her for that offence, make an order of forfeiture of any property in possession or control of that person that has been, or which the Court has reasonable grounds to believe was unlawfully acquired and

(a) where property involved is situated in the Virgin Islands declare that it be forfeited to the Government; or

(b) where the property involved is situated outside the Virgin Islands, order that an amount equivalent to the value of property, be paid by the person in public life to the Government.

(5) Any property acquired from a person referred to under subsection (4) by a *bona fide* purchaser for value without notice of any offence by that person shall not be liable to forfeiture, but an amount equivalent to the value of the property or the price paid by the purchaser, whichever is the greater, shall be paid by the person in public life to the Government.

(6) The payment of all sums due to the Government pursuant to subsection (4) (b) or subsection (5) may be enforced as a debt due to the Government and any proceedings thereon behalf of the Government may be taken.

42. Nothing in this Act shall be applied in such a way as to abrogate the immunities, powers and privileges of the House of Assembly or any member of the House of Assembly.

Preservation of immunities, powers and privileges of the House of Assembly.

43. The Minister may, with the agreement of the Governor, amend the Schedules by Order published in the *Gazette*.

Power to amend Schedules.

44. (1) The Minister may make regulations, not inconsistent with this Act, to give effect to the provisions of this Act.

Regulations.

(2) Without limiting the generality of subsection (1), regulations may provide for the following

(a) access, publication and destruction, of the information relating to the deliberations, proceedings and the records of the Commission; and

(b) prescribing anything that is required to be prescribed by this Act.

(3) Regulations made under this Act shall be subject to a negative resolution of the House of Assembly.

SCHEDULE 1

[Section 2]

PERSONS IN PUBLIC LIFE

1. Members of the House of Assembly
2. Members of the board or other governing body of a public body and other officers (by whatever name called)
3. All Public Officers

SCHEDULE 2

[Section 17(2)]

FORM**INTEGRITY IN PUBLIC LIFE ACT NO. (43 of 2021)****SUMMONS TO WITNESS BEFORE THE INTEGRITY COMMISSION**

A, B, Complainant

C, D, (name of person in public life alleged to be in breach of this Act or the Code of Conduct)

To: E, G, of

.....

Whereas a complaint has been made before the Integrity Commission that C, D, (state concisely the substance of the complaint) and it has been made to appear to the Commission that you are likely to give material evidence on behalf of the Complainant/person in public life in this behalf:

This is to require you to be and appear at
 o'clock on theday of, 20.... at
 before the Commission in the said place, to
 testify what you know concerning the matter of the complaint.

Dated thisday of20....

 Chairperson of Integrity Commission

SCHEDULE 3

[Section 22(1)]

CODE OF CONDUCT**PART I
GENERAL PRINCIPLES**

1. A person in public life has the duty to take all necessary action to comply with the provision of this Code.
2. A person in public life should carry out his or her duties in accordance with the law and with lawful instruction and ethical standards which relate to his or her functions.
3. A person in public life should act in a politically neutral manner when carrying out the lawful policies, decisions, or citations of a public body.
4. A person in public life has the duty to serve loyally the Government of the Virgin Islands.
5. A person in public life shall be honest, impartial, and efficient and shall perform his or her duties to the best of his or her ability with skill, fairness, understanding, having regard only for the public interest and the relevant circumstances of the case.
6. In the performance of his or her duties a person in public life shall not act arbitrarily to the detriment of any person, group or body and shall have regard for the rights, duties and proper interest of all others.
7. A person in public life shall not allow his or her private interest to conflict with his or her public position or function. It shall be the responsibility of the person in public life to avoid such conflicts of interest, whether real, potential, or apparent and where such conflicts are unavoidable, to fully explain the conflict to any person in public life above that person or where the conflict is in relation to a Minister of Government, to the Cabinet, or where the conflict is in relation to an elected representative, to the House of Assembly.
8. A person in public life shall not take advantage of his or her position for his or her private interest.

9. A person in public life shall always conduct himself or herself in such a way that the public's confidence and trust in the integrity, impartiality and effectiveness of the public service are preserved and enhanced.
10. Having due regard for the right of access to officer information, a person in public life shall have a duty to treat appropriately with all necessary confidentiality all information and documents acquired by him or her in the course of, or as a result of, his or her employment.
11. A person in public life who believes that he or she is being required to act in a way which is unlawful, improper, unethical, which involves maladministration, or which is otherwise inconsistent with this Code should report the matter in accordance with the law.

PART II CONFLICT OF INTEREST

12. A conflict of interest arises from a situation in which a person in public life has a private interest which is such as to influence, or appear to influence, the impartial and objective performance of his or her official duties.
13. The private interest of a person in public life includes any advantage to himself or herself, to his or her family, and any person or organisation with whom he or she has business relations. It includes any liability whether financial or work related thereto.
14. Since the person in public life is usually the only person who knows whether he or she is in that situation, he or she has a personal responsibility to
 - (a) be alert to any actual or potential conflict of interest;
 - (b) take steps to avoid such conflict;
 - (c) disclose to his or her superiors any such conflict as soon as he or she becomes aware of it; and
 - (d) comply with any final decision to withdraw from the decision or to divest himself or herself of the advantage causing the conflict.
15. Whenever required to do so, a person in public life should declare whether or not he or she has a conflict of interest.

PART III INCOMPATIBLE OUTSIDE INTERESTS

16. A person in public life shall not engage in any activity or transaction or acquire any position or function whether paid or unpaid, that is incompatible with or detracts from the proper performance of his or her duties as a person in public life. Where it is not clear whether an activity is compatible, he or she should seek advice from the Commission.
17. A person in public life shall comply with any lawful requirement to declare membership of, or association with, an organisation that could detract from his or her duties as a person in public life.

PART IV POLITICAL OR PUBLIC ACTIVITY

18. Subject to respect for fundamental and constitutional rights, a person in public life shall ensure that none of his or her political activities or involvement or political or public debates impairs the confidence of the public and his or her employers in his or her ability to perform his or her duties impartially and loyally. This paragraph does not apply to a member of the House of Assembly.
19. In the exercise of his or her duties, a person in public life shall not allow himself or herself to be used or his or her office to be used for partisan political purposes.
20. A person in public life shall comply with any restrictions in political activity lawfully imposed on certain persons in public life by reason for his or her position or the nature of his or her duties.

PART V REACTION TO IMPROPER OFFERS

21. If a person in public life is offered an undue advantage he or she should take the following steps to protect himself or herself
 - (a) refuse the undue advantage;
 - (b) try to identify the person who made the offer;
 - (c) avoid lengthy contacts with the person who made the offer;

- (d) if the gift cannot be refused or returned to the sender, it should be preserved, but handled as little as possible;
- (e) obtain witnesses if possible, such as colleagues working nearby;
- (f) prepare as soon as possible a written record of the attempt, preferably in an officer notebook;
- (g) report the attempt as soon as possible to the Commission;
- (h) continue to work normally, particularly on the matter in relation to which the undue advantage was offered.

PART VI

SUSCEPTIBILITY TO INFLUENCE BY OTHERS

- 22. A person in public life should not allow himself or herself to be put in a position of obligation to return a favour to any person or body, nor should his or her conduct in his or her official capacity or in his or her public life make him or her susceptible to improper influence of others.
- 23. A person in public life should not seek to influence for private purposes any person or body including any other person in public life by using his or her official position or by offering them personal advantage.

PART VII

INFORMATION HELD BY PUBLIC AUTHORITIES

- 24. Having respect to the framework provided by any law with respect to access to information held by a public body, a person in public life shall not disclose information in accordance with the rules and requirements applying to the body by which he or she is employed.
- 25. A person in public life should take appropriate steps to protect the security and confidentiality of information for which he or she is responsible or for which he or she becomes aware.
- 26. A person in public life should not seek access to information which is inappropriate for him or her to have and he or she should not make improper use of information which he or she may acquire in the course of, or arising from, his or her employment.
- 27. Equally, a person in public life has a duty not to withhold official information that should properly be released and a duty not to provide information which he or she knows or has reasonable grounds to believe is false or misleading.

28. This Code shall form part of the terms of employment of a person in public life and shall be observed as terms of employment.

SCHEDULE 4

[Section 36]

OATH OR AFFIRMATION OF CONFIDENTIALITY

I, (name), (office), solemnly swear / affirm* that in the performance of my duties and functions I shall keep confidential, all information which comes to my knowledge relating to the deliberations, proceedings, and the records of the Commission, and shall not disclose or communicate or use any such information, except as authorised by and in accordance with the law.

So help me God! (omit if affirming)

.....
(Signature of person swearing / affirming)

Sworn /Affirmed* before me this day of , 20

Governor.

Passed by the House of Assembly on this 22nd day of December, 2021.

Julian Willock,
Speaker.

Phyllis Evans,
Clerk of the House of Assembly.

LEGAL REPORT

This Act seeks to establish an Integrity Commission which would assist in achieving the Government's objectives to promote good governance, to enhance ethical conduct of public officials and to strengthen the prevention and detection of corrupt acts by persons in public life.

The Act consists of seven parts with forty-four sections and four Schedules.

Part I (sections 1 - 3) provides for preliminary matters. The preliminary provisions provide for the short title and commencement of the Act, as well as the definitions of various terms used throughout the Act. It also provides for the Act to apply to every person in public life.

Part II (sections 4 - 13) provides for the establishment of the Integrity Commission. It provides for the functions of the Commission and the appointment of the members, their term of appointment and removal from office. This Part also provides for the Governor to remove a member after consultation with the Premier and the Leader of the Opposition and on the recommendation of the Disciplinary Tribunal.

Part III (sections 14 - 21) provides for powers of investigation. The Commission would have the power to inquire into complaints that a person in public life may have breached the Act including committing corruption. The Commission would be empowered to enter premises occupied or used by a public body, and search for documents, inspect documents and take copies of documents. In the performance of its function to inquire into complaints, the Commission would have the power to summons and examine witnesses, administer oaths and affidavits, compel the production of documents etc. The Act provides for a person to have the right to be heard whether in person or by an attorney-at-law in relation to an inquiry. Where the Commission is of the view that there is a breach of a provision of this Act, the Commission would be required to refer the matter to the DPP and forward a report of its findings to the Governor and the Cabinet. This Part also prohibits a person who is not suspected of committing an offence from objecting to the supply of information and documents on the grounds that it might tend to incriminate him or her. It is an offence to obstruct an investigation under this Act.

Part IV (sections 22 - 26) provides for conduct in public life. It provides for a person in public life to observe the Code of Conduct specified in Schedule 3 and for the Governor to prescribe a code of conduct with respect to public officers.

This Part also requires persons in public life to be fair and impartial, to maintain public confidence in their integrity, to avoid conflicts of interests, to refrain from using their office and information obtained by virtue of their office for private gain and to refuse gifts that are connected with the performance of their duties.

Part V (sections 27 - 29) provides for the acts which would constitute an act of corruption under this Act, these include -

- (1) soliciting or accepting, whether directly or indirectly, any article or money or other benefit, or advantage for doing any act or omitting to do any act in the performance of his or her functions as a public official;
- (2) offering directly or indirectly, to a public official any article, money or other benefit or advantage for doing any act or omitting to do any act in the performance of the public official's duties;
- (3) knowingly or recklessly allowing one's private interest to conflict with his or her public duties or improperly influencing his or her conduct in the performance of his or her duties as a public official.

This Part is in addition to the existing laws and without prejudice to the powers conferred upon a relevant disciplinary authority under the Constitution.

Part VI (sections 30 - 33) provides for financial provisions. This part provides for the funds of the Commission and for proper accounts and other records of all income and expenditure of the Commission to be kept and for the Commission to be audited. The Commission is required to submit to the Minister for Finance an Annual report on its activities for each year and together with the Auditor's Report shall be laid before the House of Assembly.

Part VII (sections 34 - 44) provides for miscellaneous matters. It provides that the commencement of a prosecution under the Act would be limited to seven years from the occurrence of the offence except in the case of an offence under section 21. This Part also provides for matters to be referred to the Director of Public Prosecutions where the Commission is satisfied that there is a breach of the Act.

Further, it provides for a member of the House of Assembly to disclose any interest in debates and questions that the Member may have in relation to any matter being debated or any question the Member intends to ask at a sitting of the House of Assembly. It also provides for protection of witnesses, granting immunity from suit for actions done in good faith in the execution of duties, the forfeiture of property unlawfully acquired by a person in public life and for the making of regulations which would be subject to a negative resolution of the House of Assembly.

This Act was introduced in the House of Assembly on the 22nd day of April, 2021 taken through its remaining stages and passed on the 22nd day of December, 2021.

In my opinion, His Excellency the Governor may properly assent to this Act in the name and on behalf of Her Majesty.

Dawn J. Smith
Attorney General
27th January, 2022

No. 28 of 2021

VIRGIN ISLANDS
WHISTLEBLOWER ACT, 2021
ARRANGEMENT OF SECTIONS

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No. 28 of 2021

Whistleblower Act, 2021

Virgin
Islands**I Assent****(Sgd.) John Rankin CMG,
Governor.****5th August, 2021****VIRGIN ISLANDS****No. 28 of 2021**

An Act to provide for the manner in which individuals may in the public interest disclose information that relates to unlawful or other illegal conduct or corrupt practices of others; to provide for the protection against victimisation of persons who make these disclosures; to provide for a Fund to reward individuals who make the disclosures and to provide for related matters.

[Gazetted 10th August, 2021]

ENACTED by the Legislature of the Virgin Islands as follows:

PART I**PRELIMINARY**

- | | |
|--|--|
| <p>1. (1) This Act may be cited as the Whistleblower Act, 2021.</p> <p>(2) This Act shall come into force on such date as the Minister may, by notice published in the Gazette, appoint.</p> | <p>Short title and commencement.</p> |
| <p>2. In this Act, unless the context otherwise requires,</p> <p>“Commissioner” means the Complaints Commissioner appointed under section 110 of the Virgin Islands Constitution Order, 2007;</p> <p>“Disclosure” includes the publication, revelation, notification or divulgence of information to any of the public officials specified under section 5;</p> <p>“employee” has the same meaning assigned to it under section 2 of the Labour Code, 2010;</p> | <p>Interpretation.</p> <p>U.K. S.I. 2007 No. 1678</p> <p>No. 4 of 2010</p> |

“employer” has the same meaning assigned to it under section 2 of the Labour Code, 2010;

“Fund” means the Whistleblowers Reward Fund established under section 22; “Impropriety” includes conduct connected with matters falling under section 3; “Minister” means the Minister with responsibility for Finance;

“reward” includes a sum of money payable from the Fund to a person who makes a disclosure in accordance with this Act;

“victimisation” means acts which fall within the matters specified in section 14(2);

“Whistleblower” refers to a person who makes disclosure of impropriety.

PART II

DISCLOSURE OF INFORMATION

Disclosure of impropriety.

3. (1) A person may make a disclosure of information where he or she has reasonable cause to believe that the information tends to show that:

- (a) a crime has been committed, is about to be committed or is likely to be committed;
- (b) another person has not complied with a law or is in the process of breaking a law or is likely to break a law which imposes an obligation on that person;
- (c) a miscarriage of justice has occurred, is occurring or is likely to occur;
- (d) in a public institution there has been, there is or there is likely to be waste, misappropriation or mismanagement of public resources;
- (e) the environment has been degraded, is being degraded or is likely to be degraded; or

the health or safety of an individual or a community is endangered, has been endangered or is likely to be endangered.

(2) Notwithstanding any other law to the contrary, a disclosure of an impropriety is protected if

- (a) the disclosure is made in good faith;
- (b) the whistleblower has reasonable cause to believe that the information disclosed and an allegation of impropriety contained in it are substantially true; and
- (c) the disclosure is made to one or more of the persons or institutions specified in section 5.

(3) For the purposes of subsection (1) (e) degrading the environment includes

- (a) the deterioration of the environment through the depletion of resources such as air, water and soil;
- (b) the destruction of ecosystems;
- (c) habitat destruction;
- (d) the extinction of wildlife; and
- (e) pollution of the environment.

4. (1) Disclosure of impropriety may be made by

- (a) an employee in respect of an employer;
- (b) an employee in respect of another employee; or
- (c) a person in respect of another person, or an institution.

Person who qualifies to make disclosure of impropriety.

(2) For the avoidance of doubt disclosure of impropriety may be made by persons employed in public or private bodies or organisations.

5. (1) Disclosure of impropriety may be made to anyone or more of the following persons:

- (a) an employer of the whistleblower;
- (b) the Governor;
- (c) the Premier;
- (d) the Attorney General;
- (e) Commissioner of Police;

Person to whom or institution to which disclosure of impropriety may be made.

- (f) the Auditor General;
 - (g) a member of the House of Assembly;
 - (h) the Complaints Commissioner;
 - (i) a Cabinet Minister or Junior Minister; or
 - (j) the head of a recognised religious body.
- (2) A whistleblower may take into account
- (a) a reasonable belief or fear on the part of the whistleblower that the whistleblower may be subjected to dismissal, suspension, harassment, discrimination or intimidation;
 - (b) a reasonable belief or fear that evidence relevant to the impropriety may be concealed or destroyed;
 - (c) that the person to whom the disclosure is made will not frustrate the objective;
 - (d) that the impropriety is of an exceptionally serious nature and that expeditious action must be taken to deal with it;
 - (e) the place where and the prevailing circumstances under which the whistleblower lives, in determining to whom the disclosure is made.

PART III

PROCEDURES FOR DISCLOSURE OF IMPROPRIETY AND RELATED ACTION

Procedure for
making
disclosure.

- 6.** (1) A disclosure may be made in writing or orally.
- (2) The disclosure shall contain as far as practicable
- (a) the full name, address and occupation of the whistleblower;
 - (b) the nature of the impropriety in respect of which the disclosure is made;
 - (c) the person alleged to have committed, who is committing or

is about to commit the impropriety;

- (d) the time and place where the alleged impropriety is taking place, took place or is likely to take place;
- (e) the full name, address and description of a person who witnessed the commission of the impropriety, if there is such a person;
- (f) whether the whistleblower has made a disclosure of the same or of some other impropriety on a previous occasion and if so, about whom and to whom the disclosure was made; and
- (g) if the person is an employee making a disclosure about that person's employer or fellow employee, whether the whistleblower remains in the same employment.

7. (1) Where a whistleblower makes a disclosure orally, person to whom the disclosure is made shall cause the disclosure to be reduced into writing containing the same particulars as are specified in section 6(2).

Reduction of disclosure into writing.

(2) Where the whistleblower is illiterate, the writing required to be made under subsection (1) shall be read over, interpreted and explained to the whistleblower in a language the whistleblower understands and the whistleblower shall approve of it before making a mark to it and a certificate to this effect shall be attached to the writing.

(3) In the case of a whistleblower who is blind or has some other physical disability, but is literate, a certificate as required in subsection (2) shall be made with the necessary modifications.

8. (1) When a disclosure of impropriety is made to a person specified in section 5, the person shall

Action by person who receives disclosure of impropriety.

- (a) make a record of the time and place where the disclosure is made;
- (b) give to the whistleblower an acknowledgment in writing of receipt of the disclosure; and
- (c) keep the writing in which the disclosure is made confidential and in safe custody pending investigation of the impropriety.

(2) Where the disclosure is made to the head of a recognised religious body, the head of the religious body may instead of recording the disclosure as required under subsection (1), assist the whistleblower to make the disclosure to

the police or to some other authority specified in section 5.

(3) Persons to whom disclosures are made under this Act shall not disclose any information that comes to their knowledge in the conduct of their functions under this Act and shall ensure that such information is kept confidential.

(4) Where a person to whom the disclosure is made fails to keep confidential the disclosure, the person commits an offence and is liable on summary conviction to a fine not exceeding five hundred thousand dollars or to a term of imprisonment not exceeding five years.

Submission of
copy of written
disclosure to the
Attorney
General.

9. Where a disclosure is made to a person specified under section 5, other than the Attorney General, the person shall submit a copy of the written disclosure to the Attorney General within seven working days after receipt of the disclosure.

Investigation.

10. (1) Where a disclosure is made to a person specified under section 5, the person shall investigate the matter except that where the person to whom the disclosure is made does not have the capability to undertake the investigation, the person shall refer the disclosure as recorded to the Attorney General or to any other relevant investigatory body as may be requested by the Attorney General based on the nature of the impropriety, within seven working days after receipt of the disclosure.

(2) Notwithstanding subsection (1), the Attorney General may on receipt of a copy of a written disclosure under section 9, take the necessary steps for an investigation to be conducted into the disclosure.

(3) Investigation undertaken in respect of impropriety shall be carried out as expeditiously as possible and shall in any event be completed within sixty days of receipt of the disclosure or directives to undertake the investigation.

(4) A person who undertakes an investigation in respect of an impropriety and in the course of that investigation conceals or suppresses evidence, commits an offence and is liable on summary conviction to a term of imprisonment not exceeding five years.

Application to
court for
assistance.

11. Where in the course of an investigation under section 10, it appears to the investigator

- (a) that evidence or documents relevant to the investigation are likely to be destroyed, concealed or tampered with; or
- (b) that a person who is willing to provide information relevant to the investigation is being subjected to pressure, inducement or intimidation to withhold the information, the investigator may apply to the court for an order to preserve

the evidence or documents or to restrain the intimidation of the person willing to provide the information.

12. (1) A report on an investigation conducted under section 10 shall be submitted to the Attorney General for directives immediately after the investigation is completed.

Submission of report of investigation to the Attorney General.

(2) Where the completion of the investigation is delayed beyond the sixty day period specified in section 10(3), a report shall be submitted to the Attorney General stating

- (a) the reasons for the delay;
- (b) measures that are proposed to expedite the investigation; and
- (c) any further assistance required to complete the investigation.

(3) A report of an investigation which is submitted to the Attorney General shall contain particulars of

- (a) the manner in which the investigation was conducted;
- (b) the names and particulars of persons who provided information in the course of the investigation;
- (c) facts obtained which either confirm or dispute the truth or accuracy of the information contained in the disclosure and the person who provided the facts;
- (d) an obstacle/s encountered in the course of the investigation and the nature of such obstacle/s; and
- (e) the recommendations of the investigator.

13. The Attorney General may on receipt of a report under section 12(3), take the following steps:

Action by the Attorney General.

- (a) accept the recommendations contained in the report and act on it;
- (b) ask for further investigations by the same person or institution that conducted the investigations or by some other person or institution; or
- (c) reject the report and the recommendations for stated reasons which shall be communicated to the investigator.

PART IV

**PROTECTION FOR MAKING DISCLOSURE
OF IMPROPRIETY**

Protection of
whistleblower.

14. (1) A whistleblower shall not be subjected to victimisation by the employer of the whistleblower or by a fellow employee or by any other person because a disclosure has been made.

(2) A whistleblower shall be considered as having been subjected to victimisation where as a result of making the disclosure

- (a) the whistleblower, being an employee, is
 - (i) dismissed;
 - (ii) suspended;
 - (iii) declared redundant;
 - (iv) denied promotion;
 - (v) transferred against the whistleblower's will;
 - (vi) harassed;
 - (vii) intimidated;
 - (viii) threatened with any of the matters set out in subparagraphs (i) to (vii); or
 - (ix) subjected to a discriminatory or other adverse measure by the employer or a fellow employee; or
- (b) not being an employee, the whistleblower is subjected to discrimination, intimidation or harassment by a person or an institution.

(3) A whistleblower shall not be considered as having been subjected to victimisation if the person against whom the complaint is directed has the right in law to take the action complained of and the action taken is shown to be unrelated to the disclosure made.

15. (1) A whistleblower who honestly and reasonably believes that he or she has been subjected to victimisation or learns of a likely subsection to victimisation because a disclosure has been made, may in the first instance make a complaint to the Commissioner.

Report to
Complaints
Commissioner.

(2) A complaint made under subsection (1) shall contain the following particulars:

- (a) the name, description and address of the whistleblower;
- (b) the name, description and address of the whistleblower's employer or of any other person who the whistleblower claims has subjected the whistleblower to victimisation or might subject the whistleblower to victimisation; and
- (c) the specific acts complained of as constituting victimisation.

16. (1) The Commissioner shall, on receipt of a complaint, conduct an enquiry into the complaint at which the whistleblower and the person against whom the complaint is made shall be heard.

Action by the
Complaints
Commissioner
and enforcement
of its orders.

(2) The Commissioner in the course of conducting an enquiry under subsection (1) may make an interim order that it considers fit.

(3) After hearing the parties and other persons considered necessary by the Commissioner, the Commissioner shall make any order which is just and fair in the circumstances including an order for

- (a) reinstatement;
- (b) reversal of a transfer; or
- (c) transfer of the whistleblower to another establishment where applicable.

(4) The Commissioner may, where he or she considers it just and fair in the circumstances of the case, make an order for payment of reward from the Fund established under section 22.

(5) An order of the Commissioner under this section shall be of the same effect as a judgment or an order of the High Court and is enforceable in the same manner as a judgment or an order of the High Court.

17. A whistleblower who has been subjected to victimisation may bring an action in the High Court to claim damages for breach of contract or for another

Right of action
for victimisation.

relief or remedy to which he or she may be entitled, except that an action shall not be commenced in a court unless the complaint has first been submitted to the Commissioner under section 15.

Legal assistance. **18.** Where the Commissioner in the course of an inquiry or hearing before it under section 16, is of the opinion that the whistleblower is in need of legal assistance, the Commissioner shall issue a certificate to the whistleblower to obtain legal aid from the Legal Aid Board or from another institution that the Commissioner may specify in the certificate.

Police protection. **19. (1)** A whistleblower who makes a disclosure and who has reasonable cause to believe that

- (a) his or her life or property; or
- (b) the life or property of a member of the whistleblower's family is endangered or likely to be endangered as a result of the disclosure, may request police protection and the police shall provide the protection considered adequate in accordance with the provisions of the Justice Protection Act.

No. 18 of 2011 (2) Notwithstanding subsection (1), the Commissioner or the Attorney General as is appropriate may in relation to a disclosure of impropriety made or about to be made direct that the person who has made or is about to make the disclosure and the person's family be given police protection in accordance with the provisions of the Justice Protection Act.

No. 18 of 2011

(3) For the purposes of this section “family” means spouse, father, mother, child, grandchild, brother and sister.

Protection against civil and criminal action. **20.** A whistleblower is not liable to civil or criminal proceedings in respect of the disclosure unless it is proved that the whistleblower knew that the information contained in the disclosure is false and the disclosure was made with malicious intent.

Void employment contracts. **21. (1)** A provision in a contract of employment or other agreement between an employer and an employee is void if it

- (a) seeks to prevent the employee from making a disclosure;
- (b) has the effect of discouraging an employee from making a disclosure;
- (c) precludes the employee from making a complaint in respect of victimisation; or

- (d) prevents an employee from bringing an action in court or before an institution to claim relief or remedy in respect of victimisation.

(2) Subsection (1) also applies to a contract of employment or agreement in existence on the commencement of this Act.

PART V

WHISTLEBLOWER REWARD FUND

- | | |
|--|--|
| <p>22. There is established by this Act a Whistleblower Reward Fund.</p> | <p>Establishment of Whistleblower Reward Fund.</p> |
| <p>23. The moneys for the Fund shall consist of</p> <ul style="list-style-type: none"> (a) any voluntary contributions to the Fund; and (b) other moneys that may be allocated by the House of Assembly to the Fund. | <p>Sources of money for the Fund.</p> |
| <p>24. The object of the Fund is to provide funds for payment of monetary rewards to whistleblowers.</p> | <p>Object of the Fund.</p> |
| <p>25. A whistleblower who makes a disclosure that leads to the arrest and conviction of an accused person shall be rewarded with money from the Fund.</p> | <p>Reward on conviction.</p> |
| <p>26. A whistleblower whose disclosure results in the recovery of an amount of money shall be rewarded from the Fund with</p> <ul style="list-style-type: none"> (a) ten percent of the amount of money recovered; or (b) the amount of money that the Governor after consultation with Cabinet shall determine. | <p>Reward on recovery of money.</p> |
| <p>27. Moneys for the Fund shall be paid into a bank account opened for the purpose by the Accountant General with the approval of the Financial Secretary.</p> | <p>Bank account of the Fund.</p> |
| <p>28. (1) For the purposes of this Act, the Minister may with the approval of Cabinet give instructions not in consistent with the provisions of this Act, for the management of the Fund.</p> <p style="margin-left: 40px;">(2) For the purposes of subsection (1), the Minister shall</p> <ul style="list-style-type: none"> (a) pursue and ensure the achievement of the object of the | <p>Management of the Fund.</p> |

Fund;

- (b) ensure accountability for the Fund by defining appropriate procedures for its management; and
- (c) perform other functions as are incidental to the achievement of the object of the Fund.

Disbursement of Fund.

29. (1) The disbursement of Funds shall be determined by the Minister with the approval of Cabinet.

(2) The Accountant General shall within thirty days on receipt of the submission of a claim for payment out of the Fund, approve

- (a) payment of a reward from the Fund;
- (b) the reimbursement of expenses incurred by a whistleblower whose disclosure resulted in an investigation for which that person incurred those expenses; and
- (c) the payment of other relevant expenses as may be determined by the Accountant General.

(3) An amount payable under subsection (2)(a) and (b) shall be paid within a period of not more than three months from the date the payment of the money is approved.

(4) Each payment issued from the Fund shall be signed for by the Minister.

PART VI

MISCELLANEOUS PROVISIONS

Accounts and audit.

30. (1) Books of accounts and proper records shall be kept in respect of the Fund, in the form approved by the Auditor General.

(2) The Minister shall submit the accounts of the Fund to the Auditor General for audit within three months after the end of the financial year.

(3) The Auditor General shall not later than three months after the receipt of the accounts, audit the accounts.

Annual report.

31. (1) The Minister shall within one month of the audit report submit an annual report to Cabinet covering activities and the operations in relation to the Fund for the year to which the report relates.

(2) The annual report shall include the report of the Auditor General.

(3) Cabinet shall within one month after the receipt of the annual report, shall cause the report to be laid before the House of Assembly.

32. For the purposes of this Act, reasonable organisational, physical, security and technical measures shall be taken for the protection and storage of information against any accidental or unlawful destruction, alteration and disclosure as well as against any other unlawful processing. Storage of information.

33. (1) Cabinet may make Regulations generally as are necessary or expedient for the proper carrying out of the purposes of this Act. Regulations.

(2) Without limiting the generality of subsection (1), Regulations made under subsection (1) may provide for

- (a) further disclosure procedures;
- (b) other persons to whom disclosures may be made;
- (c) prescribing the manner or content of information or other documentation or forms as may be required under this Act;
- (d) the timelines for submission of information or any other timeline as may be required under this Act;
- (e) prescribing anything required to be prescribed under this Act; and
- (f) measures generally for the effective implementation of this Act.

Passed by the House of Assembly this 17th day of June, 2021.

(Sgd.) Julian Willock,
Speaker.

(Sgd.) Phyllis Evans,
Clerk of the House of Assembly.

No. 27 of 2021

VIRGIN ISLANDS
CONTRACTOR GENERAL ACT, 2021
ARRANGEMENT OF SECTIONS

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9. Filling of vacancy.
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SCHEDULE 1

SCHEDULE 2

No. 27 of 2021

Contractor General, Act, 2021

Virgin
Islands

I Assent
(Sgd.) John Rankin CMG,
Governor.
5th August, 2021

VIRGIN ISLANDS

No. 27 of 2021

An Act to establish the office of the Contractor General and for the monitoring and implementation of government contracts and to provide for matters connected therewith.

[Gazetted 10th August, 2021]

ENACTED by the Legislature of the Virgin Islands as follows:

PART I

PRELIMINARY

1. (1) This Act may be cited as the Contractor General, Act, 2021.

Short title and
commencement.

(2) This Act shall come into force on such date as the Minister may, by notice published in the *Gazette*, appoint.

2. In this Act, unless the context otherwise requires,

Interpretation.

“Cabinet” means the Cabinet established under section 47 of the Virgin Islands Constitution Order, 2007;

U.K. S.I. 2007
No. 1678

“Constitution” means the Virgin Islands Constitution Order, 2007;

“contractor” includes any person, firm or entity with whom a public body enters into any agreement for the carrying out of any building or other works or for the supply of any goods or services and includes a person who carries out such works or supplies such goods or services for or on behalf of any public body pursuant to a licence, permit or other concession or authority issued or granted to that person by a public body;

“Contractor General” means the Contractor General appointed under section 3 of this Act;

“functions” includes powers and duties;

“government contract” includes any licence, permit or other concession or authority issued by a public body or agreement entered into by a public body for the carrying out of building or other works or for supply of any goods or services;

“House of Assembly” means the House of Assembly established by section 63 of the Constitution;

“Minister” means the Minister responsible for Finance;

“prescribed licence” means any licence, certificate, quota, permit or warrant issued or granted pursuant to any enactment by a public body or an officer thereof;

“principal officer” means,

- (a) in relation to a Ministry, the Permanent Secretary of that Ministry;
- (b) in relation to a Department, the Head of that Department; and
- (c) in relation to any other public body - the Chief Executive Officer, general manager, or other similar officer of that body;

“public body” means,

- (a) a Ministry, department or agency of Government;
- (b) a statutory body or authority as maybe specified by the Minister by Order, subject to a negative resolution of the House of Assembly; or
- (c) any company registered under the BVI Business Companies Act, being a company in which the Government or an agency of Government holds not less than fifty-one percent of the ordinary shares, as may be specified by the Minister by Order, subject to a negative resolution of the House of Assembly;

“public contract” means a contract awarded by a public body and includes any licence, permit or other concession or authority issued by a public body or agreement entered into by a public body for the carrying out of any building or other works or for the supply of any goods or services;

“public officer” or “public service” has the meaning assigned to it under section 2 of the Virgin Islands Constitution Order, 2007; and

“Public Service Commission” means the Public Service Commission constituted under section 91 of the Virgin Islands Constitution Order, 2007. U.K. S.I. 2007 No. 1678

(2) The references in this Act to a Ministry, department or agency of Government include a reference to the Minister, members or officers of that Ministry, department or agency.

PART II

THE CONTRACTOR GENERAL

3. (1) For the purposes of this Act, there is hereby established an office to be known as the office of the Contractor General. Office of the Contractor General.

(2) The Governor in agreement with the Premier who shall first consult with the Leader of the Opposition shall appoint on such terms and conditions as they think fit, a fit and proper person to be the Contractor General.

(3) Notwithstanding anything to the contrary contained in this Act; the office of Contractor General shall not be deemed to be an office in the public service, but shall be a body corporate to which section 21 of the Interpretation Act shall apply.

(4) The Contractor General shall be appointed on the basis of integrity and demonstrated ability in any of the following areas

- (a) accounting;
- (b) auditing;
- (c) financial analysis;
- (d) law;
- (e) management analysis;
- (f) public administration; or
- (g) project management.

Independence of
the Contractor
General.
U.K. S.I. 2007
No. 1678

4. Subject to section 60(8) of the Virgin Islands Constitution Order, 2007, in the exercise of the powers conferred upon him or her by this Act, the Contractor General shall not be subject to the direction or control of any other person or authority in respect of his or her duties as the Contractor General.

Tenure of office
and resignation.

5. (1) Subject to the provisions of this Act, a person appointed as Contractor General shall hold office for a period of five years and shall, at the expiration of such period, be eligible for reappointment.

(2) The Contractor General may at any time resign his or her office by giving written notice to the Governor and the Minister and such resignation shall become effective upon receipt by the Governor and the Minister.

(3) A person appointed as Contractor General shall, subject to the provisions of subsections (4) and (5) of this section, vacate office on attaining the age of sixty-five years.

(4) Subject to the approval of the Governor and the Minister a Contractor General who attains the age of sixty-five years may be permitted if he or she is physically fit for service, to continue in office until he or she has attained such later age, not exceeding seventy years, as may be agreed between them.

(5) Notwithstanding that he or she has attained the age at which he or she is required by or under the provisions of this section to vacate his or her office, the Contractor General may continue in office for such period after attaining that age as the Governor and the Minister, may specify, in order to enable the Contractor General to give his or her decision or do any other thing in relation to any investigation he or she was conducting before he or she attained that age.

(6) Nothing done by the Contractor General shall be invalid by reason only that he or she has attained the age required by this section to vacate his or her office.

Removal from
office.

- 6. (1)** The Contractor General may be removed from office only for,
- (a) inability to discharge the functions of his or her office, whether arising from infirmity of body or mind or any other cause;
 - (b) misbehaviour or gross misconduct;
 - (c) incompetence; or
 - (d) trading with a public body without the prior approval of Cabinet,

and shall not be so removed except in accordance with the provisions of this section.

(2) For the purposes of subsection (1), the Contractor General may be removed from the office by the Governor and the Premier, who shall provide the reason for such removal in writing.

(3) For the purposes of this section, a Contractor General trades with a public body if, while holding office as such, he or she becomes party to, or is a partner in a firm or a director or manager of a company which to his or her knowledge becomes a party to any contract with a public body.

7. A person shall not be qualified for appointment to the office of Contractor General if he or she, Disqualifications for appointment.

- (a) is a member of the House of Assembly;
- (b) is an undischarged bankrupt;
- (c) has at any time been convicted of any offence involving dishonesty or moral turpitude;
- (d) is a party to, or partner in a firm, or a director or manager of a company which to his knowledge is a party to any contract with a public body; or
- (e) is found to be of unsound mind.

8. A person appointed as Contractor General shall be a full-time officer and shall not be employed in any other capacity during any period in which he or she holds office as Contractor General. Restriction on employment.

9. (1) Where a vacancy arises in the office of Contractor General, the Governor and the Minister, may designate a person to act in that office during such vacancy, until a substantive appointment is made. Filling of vacancy.

(2) Where the Contractor General is ill or absent from the Territory or is for any other reason unable to perform the functions of his or her office, those functions shall, until such time as he or she resumes the functions of his or her office or another person is appointed as the Contractor General, be assumed and performed by such person with the requisite demonstrated ability under section 3(4), as may be appointed in writing by the Governor in agreement with the Premier who shall first consult with the Leader of the Opposition, to act as Contractor General.

Remuneration of Contractor General.

10. (1) Subject to subsection (2), the Contractor General shall receive such emoluments and be subject to such other terms and conditions of service as may be determined by the Governor and the Premier.

(2) The emoluments and terms and conditions of service of the Contractor General, other than allowances that are not taken into account in computing pension, shall not be altered to his or her disadvantage during the period of his or her appointment or reappointment, as the case may be.

(3) The emoluments for the time being payable to the Contractor General by virtue of this Act shall be charged on and paid out of the monies authorised appropriated for the purpose of the office of the Contractor General under section 27.

Appointment of officers etc.

11. (1) The Contractor General shall be provided with such staff as the Minister with the approval of Cabinet may appoint and employ for the purposes of this Act, on such remuneration and on such terms and conditions as may be considered necessary for the efficient functioning and management of the office of the Contractor General and to assist in the proper performance of his or her functions under this Act.

(2) The Public Service Commission, may subject to such conditions as may be imposed, approve the secondment to the staff of the Contractor General, of any officer in the public service, provided that in relation to any pension, gratuity, allowances and other rights as a public officer, such officer shall be deemed to be in the public service while so employed.

Oath of office.

12. (1) Every person appointed to the staff of the Contractor General shall, before he or she performs any function assigned to them under or by virtue of this Act, take and subscribe an oath to be administered by the Contractor General, that he or she will faithfully, fully, impartially and to the best of his or her ability discharge the trust and perform the duties devolving upon him or her, as specified in the form set out in Schedule 2 to this Act.

Schedule 2

(2) The Oath referred to in subsection (1) shall be taken before a Magistrate, Additional Magistrate, Registrar of the High Court or a Justice of the Peace.

(3) The Contractor General shall keep a record of all Oaths taken pursuant to this section.

PART III

POWERS AND FUNCTIONS OF CONTRACTOR GENERAL

13. (1) Subject to the provisions of this Act, it shall be the function of a Contractor General, Functions of Contractor General.

- (a) to monitor the award and the implementation of government contracts with a view to ensuring that,
 - (i) such contracts are awarded impartially and on merit;
 - (ii) the circumstances in which each contract is awarded or, as the case may be, terminated, do not involve any impropriety or irregularity;
 - (iii) without prejudice to the functions of any public body in relation to any contract, the implementation of each such contract conforms to the terms thereof;
 - (iv) there is no fraud, corruption, mismanagement, waste or abuse in the awarding of contracts by a public body;
- (b) to investigate any such fraud, mismanagement, waste or abuse under paragraph (a)(iv);
- (c) to develop policy guidelines, evaluate programme performance and monitor actions taken by a public body with respect to the award, execution and termination of contracts; and
- (d) to monitor the grant, issue, suspension or revocation of any prescribed licence, with a view to ensuring that the circumstances of such grant, issue, suspension or revocation do not involve impropriety or irregularity and, where appropriate, to examine whether such licence is used in accordance with the terms and conditions thereof.

(2) For the purpose of the discharge of his or her functions under this Act, the Contractor General shall be entitled,

- (a) to be advised of the award and, where applicable, the variation of any public contract by the public body responsible for such contract;

- (b) on the authority of a warrant issued in that behalf by a Magistrate
 - (i) to have access to all books, records, documents, stores or other property belonging to a public body, whether in the possession of any officer of a public body or a contractor or any other person;
 - (ii) to have access to any premises or location where work on a public contract has been, is being or is to be carried out;
 - (iii) to have access to all books, records, documents or other property used in connection with the grant, issue, suspension or revocation of any prescribed licence whether in the possession of any public officer or any other person;
 - (iv) to have access to any premises or location where he or she has reason to believe that any such books, records, documents or other property as are referred to in paragraph (d) above or any property which is the subject of a prescribed licence, may be found;
 - (v) to enter any premises occupied by any person in order to make such enquiries or to inspect such document, record or property as he or she considers necessary to any matter being investigated by him or her; and
 - (vi) without prejudice to the provisions of sections 17 and 18 of this Act, to retain any such document, record or other property referred to in paragraph (v) above.

(3) For the purpose of subsection (2), the Contractor General shall have power to require any public body to furnish in such manner and at such times as may be specified by the Contractor General, information with regard to the award of any contract and such other information in relation thereto as the Contractor General considers desirable.

(4) For the purposes of subsection (2)(b)(iii) and (iv), the Contractor General shall have power to require any public officer or any other person to furnish in such manner and at such times as may be specified by the Contractor General, information with regard to the grant, issue, suspension, or revocation of any prescribed licence and such other information in relation thereto as the Contractor General considers desirable.

14. The Contractor General shall, where it is necessary and desirable, conduct an investigation into any or all of the following matters, Scope of investigation.

- (a) the selection of contractors;
- (b) tender procedures relating to contracts awarded by public bodies;
- (c) the award of any public contract;
- (d) any allegation of fraud, mismanagement, waste or abuse involving public contracts;
- (e) the implementation of the terms of any public contract;
- (f) the circumstances of and the practices and procedures relating to the grant, issue, use, suspension or revocation of any prescribed licence.

15. (1) An investigation pursuant to section 14 may be undertaken by the Contractor General on his or her own initiative or as a result of representations made to him or her, if in his or her opinion such investigation is warranted. Initiation of investigation

(2) The Contractor General may receive and investigate complaints or information from an employee of a public body concerning the possible existence of an activity constituting

- (a) a violation of law, rules, or regulations;
- (b) mismanagement, gross waste of funds, fraud, corruption or other impropriety relating to the award or termination of any contract; or
- (c) the grant, issue suspension or revocation of any prescribed licence.

(3) The Contractor General shall not, after receipt of a complaint or information from an employee under subsection (2), disclose the identity of the employee without the consent of the employee, unless the Contractor General determines that such disclosure is unavoidable during the course of the investigation.

16. (1) The Contractor General may adopt whatever procedure he or she considers appropriate to the circumstances of a particular case and, subject to the Procedure in respect of investigations.

provisions of this Act, may obtain information from such persons and in such manner and make such enquiries as he or she thinks fit.

(2) Nothing in this Act shall be construed as requiring the Contractor General to hold any hearing and no person shall be entitled as of right to comment on any allegations or to be heard by the Contractor General.

(3) Regulations made under this Act may prescribe the practice and procedure to be adopted at any hearing.

Evidence.

17. (1) Subject to the provisions of subsection (5) and section 18(1), the Contractor General may at any time require any officer or member of a public body or any other person who, in his or her opinion, is able to give any assistance in relation to the investigation of any matter pursuant to this Act, to furnish such information and produce any document or thing in connection with such matters as may be in the possession or under the control of that officer, member or other person.

(2) Subject as aforesaid, the Contractor General may summon before him or her and examine on oath,

- (a) any person who has made representations to him or her; or
- (b) any officer, member or employee of a public body or any other person who, in the opinion of the Contractor General, is able to furnish information relating to the investigation,

and such examination shall be deemed to be a judicial proceeding and the appropriate provisions of the Criminal Code, (relating to perjury and obstruction of public justice) shall apply to all statements made in such proceedings.

(3) For the purpose of an investigation under this Act, the Contractor General shall have the same powers as a Judge of the High Court in respect of the attendance and examination of witnesses and the production of documents.

(4) This Act shall not operate so as to prejudice any law or rule of law for the time being enforce in the Virgin Islands in which there is any obligation to maintain secrecy or any restriction on the disclosure of information or the production of any document or paper or thing.

(5) No person shall, for the purpose of an investigation, be compelled to give any evidence or produce any document or thing which he or she could not be compelled to give or produce in proceedings in any court of law.

Restriction on the disclosure of certain matters.

18. (1) The Governor in agreement with the Premier may direct that a document or information will not be disclosed or a question will not be answered

if in the opinion of the Governor and the Premier the disclosure of the document or information or the answering of the question would

- (a) involve the disclosure of the deliberations or proceedings of the Cabinet, or any committee thereof, relating to matters of a secret or confidential nature and is likely to be injurious to the public interest; and
- (b) prejudice the relations of the Virgin Islands with the Government of any other country or with any international organisation,

the Contractor General shall not further require such information or answer to be given or such document or thing to produce.

(2) The Governor may direct that a document or information may not be disclosed or a question will not be answered if in the opinion of the Governor the disclosure of the document or information or the answering of the question would

- (a) prejudice the detection of indictable offences; or
- (b) prejudice the security or defence of the Virgin Islands,

the Contractor General shall not further require such information or answer to be given or such document or thing to be produced.

(3) The requirement of the Contractor General to request documents or information or ask questions for the purposes of this Act, shall not operate so as to prejudice any law or rule of law for the time being enforce in the Virgin Islands which authorises or requires the refusal to answer any question or the withholding of any information or document or thing on the ground that the answering of the question or the disclosure of the information, document or thing would be injurious to the public interest.

19. (1) After conducting an investigation under this Act, the Contractor General shall, in writing, inform the principal officer of the public body concerned and the Minister having responsibility therefor, of the result of that investigation and make such recommendations as he or she considers necessary in respect of the matter which was investigated.

Procedure after investigation.

(2) Where the Contractor General makes an adverse finding against any person, the Contractor General shall, so far as practicable, inform that person of the substance of the report.

(3) Where the Contractor General has made a recommendation under subsection (1) and within the time specified or a reasonable time thereafter, and he or she is of the opinion that no adequate action has been taken in pursuance of his or her recommendation then such findings shall be presented to the Minister who shall lay such recommendation before the House of Assembly.

Disciplinary
action against
officers.

20. (1) Subject to subsection (2) where the Contractor General finds, during the course of his or her investigation or on the conclusion thereof, that there is evidence of a breach of duty or misconduct, irregularity, impropriety, breach of trust or criminal offence on the part of an officer or member of a public body, he or she shall refer the matter to the person or persons competent to take such disciplinary or other proceeding as may be appropriate against that officer or member and a report of such matters shall be presented to the Minister.

(2) In every case where the Contractor General finds that there is evidence of the commission of a criminal offence he or she shall, in addition to taking action as prescribed in subsection (1) of this section, refer the matter to the Director of Public Prosecutions.

(3) In every case where the Contractor General finds that there is evidence of the commission of impropriety on the part of an officer or member of a public body he or she shall lay a copy of a report regarding such matters to the Auditor General, Financial Secretary or Complaints Commissioner or any other relevant authority.

Power of
Contractor
General to
investigate
notwithstanding
Complaints
Commissioner
and Auditor
General.
No. 6 of 2003
No. 13 of 2003

21. (1) Notwithstanding the investigative powers conferred upon the Complaints Commissioner under the Complaints Commissioner Act, 2003 and the powers conferred upon the Auditor General under the Audit Act, 2003, the Contractor General shall have power to investigate any allegation of fraud, corruption, mismanagement, waste, abuse or other impropriety or irregularity in the award, execution or termination of any contract; or in the grant, issue, suspension or revocation of any prescribed licence.

(2) In carrying out his or her investigations, duties and responsibilities under this Act, the Contractor General shall have particular regard to the activities and functions of the Complaints Commissioner with respect to investigations under the Complaints Commissioner Act, 2003 and the Auditor General with respect to investigations under the Audit Act, 2003 and the requisite policies and procedures for such offices, with a view to avoiding duplication of functions and ensuring effective coordination and cooperation between his or her office and that of the Complaint's Commissioner and the Auditor General.

(3) In this section, reference to the

- (a) “Complaints Commissioner” means the Complaints Commissioner appointed under section 110 of the Virgin Islands Constitution Order, 2007;

U.K.S.I. 2007
No. 1678

- (b) “Auditor General” means the Auditor General appointed under section 109 of the Virgin Islands Constitution Order, 2007.

22. The proceedings of the Contractor General shall not be rendered void for want of form.

Proceedings of
Contractor
General not to be
void for want of
form.

23. (1) Except in the case of proceedings for an offence under section 30 (c) of this Act, no proceedings whatsoever shall lie against the Contractor General or any person concerned with the administration of this Act, for anything he or she may do or report or say or for anything done or omitted to be done in good faith in the performance, discharge or purported discharge of any functions, duties or powers conferred or imposed by this Act.

Privilege.

(2) Anything said or information supplied or any document or thing produced by any person for the purpose or in the course of any investigation by or proceedings before the Contractor General under this Act, shall be absolutely privileged in the same manner as if the investigation or proceedings were proceedings in a court of law.

(3) For the purposes of the Libel and Defamation any report made by the Contractor General under this Act and any fair and accurate comment thereon shall be deemed to be privileged.

24.(1) Where a public body or any person is aggrieved by a decision of the Contractor General in respect of this Act, an appeal may be made to the Appeal Tribunal by filing a notice of appeal within fourteen days of the decision of the Contractor General.

Right to appeal.

(2) A notice of appeal under subsection (1) shall be in writing addressed to the Appeal Tribunal setting out the grounds of appeal and shall be in such form as the Appeal Tribunal may determine.

(3) Upon receipt of a notice of appeal, the Appeal Tribunal shall proceed to hear the appeal on such date and time as the Appeal Tribunal may determine.

(4) In hearing an appeal under subsection (1), the Appeal Tribunal shall

- (a) adopt such rules of procedures as it may determine;

- (b) have regard to the written decision of the Contractor General and any other document that forms part of the record of appeal.
 - (c) have regard to the record of any oral, documentary or other evidence which the Contractor General had or relied upon in arriving at his or her decision;
 - (d) have regard to any submissions provided by the Contractor General and the aggrieved person; and
 - (e) allow the aggrieved person or the Contractor General, if any of them wishes to do so, to be represented by a legal practitioner or other representative of his or her choice.
- (5) In hearing an appeal under subsection (1), the Appeal Tribunal may
 - (a) permit oral or written submissions, or both;
 - (b) permit the introduction of evidence (oral or otherwise) if it is satisfied that new evidence has become available or has been discovered that
 - (i) is substantial and material to the Contractor General's decision; and
 - (ii) did not exist at the time the Contractor General made its decision, or was not discovered or could not reasonably have been discovered at the time of the decision;
 - (c) consider evidence related to the appeal, whether or not that evidence would be permissible in court; and
 - (d) proceed with the hearing of an appeal in the absence of the aggrieved person if the aggrieved person has been given at least 10 days' notice of the hearing.
- (6) The Appeal Tribunal shall, after hearing an appeal,
 - (a) affirm the Contractor General's decision appealed against;
 - (b) vary the Contractor General's decision appealed against in such manner and to such extent as the Appeal Tribunal considers fit; or

- (c) set aside the Contractor General's decision appealed against and remit the decision concerned for reconsideration by the Contractor General in accordance with such direction as the Appeal Tribunal may specify or consider fit.
- (7) A decision of the Appeal Tribunal shall be in writing and state the reasons for the decision.
- (8) The provisions of Schedule 1 shall have effect as to the constitution and operation of the Appeal Tribunal and otherwise in relation thereto.

Schedule 1

PART IV

MISCELLANEOUS

25. (1) The Contractor General and every person concerned with the administration of this Act shall regard as secret and confidential all documents, information and things disclosed to them in the execution of any of the provisions of this Act, except that no disclosure,

Secrecy of information.

- (a) made by the Contractor General or any person aforesaid in proceedings for an offence under section 30 of this Act or under the appropriate provisions of the Criminal Code (relating to perjury and obstruction of public justice) by virtue of section 18(3) of this Act; or
- (b) which the Contractor General thinks necessary to make in the discharge of his or her functions or for the purpose of executing any of the provisions of sections 20, 21 and 29 of this Act,

shall be deemed inconsistent with any duty imposed by this subsection.

(2) Neither the Contractor General nor any such person aforesaid shall be called upon to give evidence in respect of, or produce, any document, information, or thing, aforesaid in any proceedings other than proceedings mentioned in subsection (1).

(3) Nothing in this section shall prevent disclosure by any person of information furnished to him or her pursuant to section 20 of this Act.

Performance of
functions of
Contractor
General by
members of staff.

26. (1) Without prejudice to the provisions of section 9(2) of this Act, the functions of the Contractor General, except those under sections 20, 21, and 28 of this Act, may be performed by any member of his or her staff authorised for that purpose by the Contractor General.

(2) Nothing in subsection (1), shall be construed as affecting the responsibility of the Contractor General for functions performed on his or her behalf pursuant to subsection (1) of this section.

Funding.

27. The funds of the office of Contractor General shall consist of,

- (a) sums as may from time to time be appropriated by the House of Assembly for the purposes of the office of Contractor General; and
- (b) all other moneys which may in any manner become payable to or vested in the Contractor General in respect of any matter incidental to his or her functions.

Accounts etc.

28. (1) The accounts and financial transactions of the office of Contractor General shall be audited annually by the Auditor General and a statement of accounts so audited shall form part of the annual report referred to in section 29 of this Act.

(2) The Contractor General shall, before a date specified by the Minister,

- (a) submit to the Minister a statement of accounts in a form satisfactory to the Minister and audited in accordance with the provisions of subsection (1) of this section;
- (b) submit to the Minister for approval, estimates of revenue and expenditure for the ensuing financial year.

Reports.

29. (1) The Contractor General may at any time be required by the Cabinet to submit a report thereto in respect of any matter being investigated by him or her.

(2) The Contractor General shall submit to the Cabinet an annual report relating generally to the execution of his or her functions and may at any time submit a report relating to any particular matter or matters investigated, or being investigated by him or her.

(3) Reports under this section shall be submitted to the Minister who shall, three months after receipt of the report, have them laid before the House of Assembly.

(4) The Contractor General may, in the public interest, from time to time publish in such manner as he or she thinks fit, reports relating to such matters as are mentioned in subsection (2) of this section and any case which is the subject of a special report under section 20 of this Act, but no such report shall be published until after it has been laid before the House of Assembly pursuant to subsection (3) of this section.

30. Any person who,

Offences.

- (a) wilfully makes any false statement to mislead, or misleads or attempts to mislead the Contractor General or any other person in the execution of his or her functions under this Act; or
- (b) without lawful justification or excuse,
 - (i) obstructs, hinders or resists the Contractor General or any other person in the execution of his or her functions under this Act; or
 - (ii) fails to comply with any lawful requirement of the Contractor General or any other person under this Act;
- (c) deals with documents, information or things mentioned in subsection (1) of section 25 of this Act, in a manner inconsistent with his or her duty under that subsection; or
- (d) otherwise than in the course of his or her duty, directly or indirectly, by himself or herself or by any other person, in any manner whatsoever, wilfully influences or attempts to influence the decision of the Contractor General with regard to any complaint made to him or her or to any investigation made by him or her,

commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding twelve months, or to both such fine and imprisonment.

31. (1) Nothing in this Act shall be construed as limiting or affecting any remedy or right of appeal or objection given to any person by any other law.

Remedy under any other provision of law unaffected.

(2) The Contractor General may initiate or continue any investigation and report thereon pursuant to this Act notwithstanding any legal proceedings relating to the subject matter of the investigation.

Power to amend
Schedules.

32. The Minister may amend the Schedules to this Act by Order published in the *Gazette*.

Regulations.

33. (1) Cabinet on the advice of the Contractor General may make regulations to provide for any matter in respect of which it may be necessary or desirable to make regulations for the better carrying into effect of the provisions of this Act, and, without prejudice to the generality of the foregoing, such regulations may provide for,

- (a) any matter required by this Act to be prescribed;
- (b) the circumstances in which and the manner in which information relating to public contracts shall be furnished to the Contractor General; and
- (c) establish and maintain such schemes or such other arrangements for the payment of pensions and other benefits in respect of the officers and employees of the Contractor General.

(2) All regulations made by Cabinet on the advice of the Contractor General under this section shall be laid before the House of Assembly as soon as may be after the making thereof and shall be subject to negative resolution.

Oath of
allegiance.

34. Before entering upon his or her duties under this Act, the Contractor General shall take and subscribe the oath of allegiance that he or she shall faithfully and impartially exercise the functions of his or her office.

(2) The Oath referred to in subsection (1) shall be taken before a Magistrate, Additional Magistrate, Registrar of the High Court or a Justice of the Peace.

SCHEDULE 1

[Section 7(7)]

APPEALS TRIBUNAL

- | | |
|--|---|
| <p>1. The Appeals Tribunal shall consist of at least five members appointed by the Minister with the approval of Cabinet.</p> | <p>Constitution and procedure of appeals tribunal appointment of members.</p> |
| <p>2. The tribunal shall be presided over by a Chairperson who shall be a retired judge or a senior lawyer of at least twenty years practice as a legal practitioner.</p> | <p>Chairperson.</p> |
| <p>3. If the chairperson or other member of the Appeals Tribunal is absent temporarily or unable to act, the Minister with the approval of Cabinet may appoint another person to act temporarily as chairman or such other member.</p> | <p>Temporary Appointment.</p> |
| <p>4. (1) Subject to the provisions of this Schedule, a member of the Appeals Tribunal shall hold office for such period, not exceeding two years, as may be specified in the instrument of appointment.</p> | <p>Appointment period.</p> |
| <p>(2) Every member of the Appeals Tribunal shall be eligible for reappointment, but no such member shall be appointed for more than six consecutive years.</p> | |
| <p>(3) If any vacancy occurs in the membership of the Appeals Tribunal, the vacancy shall be filled by the making of another such appointment; however, the member so appointed shall, subject to the provisions of this Schedule, hold office for the remainder of the period for which the previous member was appointed.</p> | |
| <p>(4) The Minister with the approval of Cabinet may, at any time, revoke the appointment of the chairperson or any other member if it thinks it expedient so to do.</p> | |
| <p>5. (1) Any member of the Appeals Tribunal other than the chairperson may, at any time, resign his or her office by instrument in writing addressed to the Minister and transmitted through the chairperson and from the date of the receipt by the Minister of such instrument such member shall cease to be a member of the Appeals Tribunal.</p> | <p>Resignation.</p> |
| <p>(2) The chairperson may, at any time, resign his or her office by instrument in writing addressed to the Minister and such resignation shall take effect as from the date of the receipt of such instrument by the Minister.</p> | |
| <p>6. The names of the members of the Appeals Tribunal as first</p> | <p>Publication of membership.</p> |

constituted and every change in membership thereof shall be published in the *Gazette*.

Authentication of documents.

7. All documents made by, and all decisions of the Appeals Tribunal may be signified under the hand of the chairman or any member of the Appeals Tribunal authorised to act in that behalf.

Procedure.

8. (1) The Appeals Tribunal shall meet at such times as may be necessary or expedient for the transaction of business and such meetings shall be held at such places and times and on such days as the Appeals Tribunal may determine.

(2) The chairperson or any other person appointed to act temporarily as chairman shall preside at meetings of the Appeals Tribunal.

(3) Subject to sub-paragraph 1, the decisions of the Appeals Tribunal shall be by a majority of votes of the members and, in addition to an original vote, the chairman shall, having a casting vote in any case in which the voting is equal.

(4) The Appeals Tribunal, with the approval of the Cabinet, may make rules to regulate its own proceedings.

(5) Proper records of all proceedings of the Appeals Tribunal shall be kept.

Remuneration of members.

9. There shall be paid to the chairperson and other members or the Appeals Tribunal such remuneration (whether by way of honorarium, salary or fees) and such allowances as the Minister may determine.

Protection of members.

10. No action, suit, prosecution or other proceedings shall be brought or instituted personally against any member of the Appeals Tribunal in respect of an act done bonafide in pursuance or execution or intended execution of the provisions of this Act.

Declaration of interest.

11. A member of the Appeal Tribunal who has any direct or indirect personal, professional, business or pecuniary interest in any matter which is the subject of appeal before the Appeal Tribunal shall, as soon as reasonably practicable,

- (a) declare his interest in writing stating the nature of the interest; and
- (b) recuse himself from participating in the hearing of, or discussing any matter relating to, the appeal concerned.

(2) A member of the Appeal Tribunal who fails to declare an interest as required under subsection (1) shall, without prejudice be liable to be removed as a member of the Appeal Board.

SCHEDULE 2

[Section 12]

OATH OF OFFICE OF ASSIST CONTRACTOR GENERAL

Ido swear (or solemnly and sincerely affirm and declare) that I will faithfully perform any functions assigned to me under the Contractor General Act, No. of 2021, and I will not, on any account, at any time whatsoever, except in so far as provisions of the Act authorise, directly or indirectly, reveal or make known any information or the nature or contents of any documents communicated to me in the performance of any functions assigned to me by virtue of the Act.

SO HELP ME GOD. (omit if affirming)

Sworn/ Affirmed before me a Magistrate/Additional Magistrate/ Registrar of the High Court/Justice of the Peace* this , day of ,

Name of person swearing/affirming

*Delete as appropriate.

Passed by the House of Assembly on this 17th day of June, 2021.

(Sgd.) Julian Willock,
Speaker.

(Sgd.) Phyllis Evans,
Clerk of the House of Assembly.

No. 25 of 2021

VIRGIN ISLANDS

PROCEEDS OF CRIMINAL CONDUCT (AMENDMENT) ACT, 2021

ARRANGEMENT OF SECTIONS

Section

- 1... Short title and commencement.
- 2... Section 2 amended.
- 3... New section 5A inserted.
- 4... Section 11 amended.
- 5... New section 26A inserted.
- 6... Section 27 amended.
- 7... Section 27A amended.
- 8... Section 28 amended.
- 9... Section 29 amended.
- 10... Section 30 amended.
- 11.. Section 30A amended.
- 12.. Section 31 amended.
- 13.. Section 34B amended.
- 14.. Section 37A amended.

No. 25 of 2021

**Proceeds of Criminal Conduct
(Amendment) Act, 2021**

**Virgin
Islands**

I Assent
(Sgd.) John J. Rankin CMG
Governor.
14th June, 2021

VIRGIN ISLANDS

No. 25 of 2021

An Act to amend the Proceeds of Criminal Conduct Act, 1997 (No. 5 of 1997) and to provide for other matters connected therewith.

[Gazetted 22nd June, 2021]

ENACTED by the Legislature of the Virgin Islands as follows:

Short title and commencement. **1.** (1) This Act may be cited as the Proceeds of Criminal Conduct (Amendment) Act, 2021.

(2) This Act shall come into force on such date as the Governor may, by Proclamation published in the *Gazette*, appoint.

Section 2 amended. **2.** Section 2 of the Proceeds of Criminal Conduct Act, 1997 (hereinafter referred to as the “principal Act”) is amended –

(a) in subsection (1) –

- (i) in the definition of “criminal conduct”, by deleting the words “and, for the purposes of a confiscation order, includes a person against whom proceedings have been instituted for an offence under the Drugs (Prevention of Misuse) Act”;
- (ii) by deleting the definition of “property” and substituting the following definition –

“property” includes money and all other property, real or personal, including things in action, virtual assets and other intangible or incorporeal property, and “virtual assets” shall be interpreted as referring to any digital representation of value that can be digitally traded or transferred and can be used for payment or investment purposes;”;

- (iii) by inserting in their appropriate alphabetical order, the following new definitions –

““money laundering” means the doing of any act which constitutes an offence under section 28, 29, 30 or 30A or, in the case of an act done otherwise than in the Territory, would constitute such an offence if done in the Territory, and, for that purpose, having possession of any property shall be taken to be doing an act in relation to the property;

“terrorist financing” has the meaning ascribed to it in section 2 (1) of the Financial Investigation Agency Act, 2003;”;

- (iv) by deleting the definition of “Steering Committee”;

- (b) by deleting subsection (1A) and substituting the following new subsection –

“(1A) Unless the context otherwise requires, a reference in this Act to “money laundering”, “countering the financing of terrorism” and “terrorist financing” shall be construed to include proliferation financing within the meaning of the Proliferation Financing (Prohibition) Act and, if applicable, the Financial Investigation Agency Act.”;

- (c) in subsection (5) (d), by deleting the word “indictable”.

New section
5A inserted.

- 3.** The principal Act is amended by inserting immediately after section 5, the following new section –

“Investigation
of predicate
and related
offences.

5A. (1) Where a police officer or the Agency institutes investigations in respect of a criminal conduct or a financial offence, the police officer or the Agency, as the case may be, shall, where it is reasonable to do so having regard to the nature and circumstance of the criminal conduct or financial offence, at the same time investigate any related money laundering or terrorist financing offence.

(2) Subsection (1) also applies where the Agency, acting in accordance with the powers conferred on it under section 4 (2) (1) of the Financial Investigation Agency Act, 2003, provides

documents and other information to the Commissioner of Police in relation to the commission of an offence.

(3) The term “financial offence” bears the same meanings ascribed to it in section 2 (1) of the Financial Investigation Agency Act, 2003.”.

Section 11
amended.

4. Section 11 of the principal Act is amended –

(a) by inserting after subsection (4), the following new subsection –

“(4A) Subsection (4) shall not affect the power of the court to deal with the defendant in respect of a failure to comply with an order under this section.”;

(b) by adding after subsection (6), the following new subsections –

“(7) Where the court makes an order under this section, it may at any time vary it by making another order.

(8) No information given under this section which amounts to an admission by the defendant that he has benefitted from criminal conduct is admissible in evidence in proceedings for an offence, but such document or information is otherwise admissible in evidence in proceedings for a confiscation or forfeiture order.”.

New section
26A inserted.

5. The principal Act is amended by inserting under the heading “MONEY LAUNDERING AND OTHER OFFENCES” after section 26, the following new sections –

“Authority for
receipt of
suspicious
transaction
reports.

26A. (1) The Agency shall be the authority responsible for the receipt of reports on suspicious transactions and other disclosures relating to money laundering and terrorist financing.

(2) Where an obligation is placed on a person under this Act or any other enactment to make a suspicious transaction report or other disclosure in relation to a money laundering or terrorist financing activity, that report or disclosure shall be made to the Agency.

(3) Where the Agency receives a suspicious transaction report or other disclosure relating to money laundering or terrorist financing, it shall deal with the report or other disclosure in accordance with its functions under the Financial Investigation Agency Act, 2003

or in such other manner as may be provided under this Act or any other enactment.

Establishment
of National
Anti-money
Laundering and
Terrorist
Financing
Coordinating
Council.

26B. (1) There is established a council to be known as the National Anti-money Laundering and Terrorist Financing Coordinating Council (“the Coordinating Committee”) which shall consist of –

- (a) the Premier, as Chairperson;
- (b) the Governor;
- (c) the Deputy Governor;
- (d) the Attorney General;
- (e) the Managing Director of the Commission;
- (f) a member of the Joint Anti-money Laundering and Terrorist Financing Advisory Committee established under section 27A;
- (g) a member of the Inter-governmental Committee on Anti-money Laundering and Terrorist Financing Group established pursuant to section 50 of the Anti-money Laundering and Terrorist Financing Code of Practice; and
- (h) a member of the Council of Competent Authorities established under section 10A of the Criminal Justice (International Cooperation) Act, 1993.

(2) The Council shall act as the Territory’s focal point for the coordination of all policies, including ensuring the Territory’s compliance with established international standards to which the Territory is a party or has subscribed to, relating to the activities of money laundering and terrorist financing.

(3) Without prejudice to any specific function or power that may be imposed or conferred under an enactment on a member of the Council, institution or any other person, the Council may exercise such powers as are reasonable to ensure the Territory’s compliance with enactments and any established

policies relating to the activities of money laundering and terrorist financing and, in that regard, may –

- (a) give such orders or directives as it considers appropriate;
- (b) cause surveys or internal self-assessments to be carried out to determine the risks of money laundering and terrorist financing in the Territory, including the level of compliance with laws and policies in respect thereof; and
- (c) provide or recommend the provision of necessary resources to ensure the efficient and effective implementation of laws and policies relating to money laundering and terrorist financing.

(4) In the discharge of its functions and the exercise of its powers under this section, the Council shall determine its own rules of procedure.”.

Section 27
amended.

6. Section 27 of the principal Act is amended –

- (a) in subsection (1), by deleting the opening paragraph and substituting the following new opening paragraph –

“The Commission may, after consultation with the Joint Anti-money Laundering and Terrorist Financing Advisory Committee established under section 27A, issue a Code of Practice for the purpose of –”;

- (b) in paragraph (b) of subsection (8), by deleting the words “Assets Sharing Fund of the Agency” and substituting the words “Financial Investigation Agency Asset Fund”; and

- (c) by deleting subsection (8A).

Section 27A
amended.

7. Section 27A of the principal Act is amended in subsection (2), by deleting the words “not more than 14 members” and substituting the words “not more than 16 members”.

Section 28
amended.

8. Section 28 of the principal Act is amended –

- (a) in subsection (2), by deleting the words “Reporting Authority” wherever they appear in the opening paragraph and substituting the word “Agency”;

- (b) in subsection (3) (c), by deleting the words “Reporting Authority” and substituting the word “Agency”;
- (c) in subsection (4), by deleting the words “Reporting Authority” and substituting the word “Agency”;
- (d) in subsection (5) –
 - (i) in the opening paragraph, by deleting the words “Steering Committee” wherever they appear and substituting the word “Agency”;
 - (ii) in paragraph (a), by inserting after the word “any”, the word “other”;
- (e) in subsection (5A), by deleting the words “Steering Committee” and substituting the word “Agency”; and
- (f) in subsection (8A), by deleting the words “the Steering Committee or”.

Section 29
amended.

9. Section 29 of the principal Act is amended –

- (a) in subsection (5), by deleting the words “Reporting Authority” wherever they appear in the opening paragraph and substituting the word “Agency”;
- (b) in subsection (6) –
 - (i) in the opening paragraph, by deleting the words “Steering Committee” and substituting the word “Agency”;
 - (ii) in paragraph (a), by inserting after the word “any”, the word “other”;
- (c) in subsection (6A), by deleting the words “Steering Committee” and substituting the word “Agency”;
- (d) in subsection (9), by deleting the words “Reporting Authority” and substituting the word “Agency”;
- (e) in subsection (10), by deleting the words “Reporting Authority” and substituting the word “Agency”; and
- (f) in subsection (12), by deleting the words “Reporting Authority” and substituting the word “Agency”.

Section 30
amended.

10. Section 30 of the principal Act is amended in subsection (3B) by deleting the words “the Steering Committee or”.

Section 30A
amended.

11. Section 30A of the principal Act is amended –

- (a) in subsection (1) (c), by deleting the words “Steering Committee” and substituting the word “Agency”; and
- (b) in subsection (4), by deleting the words “Steering Committee” in the opening paragraph and substituting the word “Agency”.

Section 31
amended.

12. Section 31 of the principal Act is amended –

- (a) in subsection (1) (a), by deleting the words “Reporting Authority” and substituting the word “Agency”;
- (b) in subsection (2) (a) by deleting the words “Steering Committee” and substituting the word “Agency”;
- (c) by repealing subsection (7);
- (d) by repealing subsection (8); and
- (e) in subsection (10), by deleting the words “Reporting Authority” and substituting the word “Agency”.

Section 34B
amended.

13. Section 34B of the principal Act is amended –

- (a) in subsection (2), by deleting the words “, the Steering Committee”; and
- (b) in subsection (4) (b), by deleting the words “, the Steering Committee”.

Section 37A
amended.

14. Section 37A of the principal Act is amended –

- (a) in subsection (1) (b) by deleting the words “section 6 of the Customs Ordinance” and substituting the words “section 4 (1) of the Customs Management and Duties Act, 2010”; and

- (b) by deleting subsection (2) and substituting the following subsection –

“(2) A police officer or customs officer may seize and detain any cash which –

(a) is found in the Territory, or

(b) is being imported into or exported from the Territory if its amount is not less than \$10,000,

and he or she has reasonable grounds for suspecting that the cash –

- (i) is intended by any person for use in criminal conduct; or
- (ii) directly or indirectly represents any person's proceeds of criminal conduct.”.

Passed by the House of Assembly this 11th day of May, 2021.

(Sgd.) Julian Willock,
Speaker.

(Sgd.) Phyllis Evans,
Clerk of the House of Assembly.

No. of 2021

APPENDIX 2

VIRGIN ISLANDS

**PROCEEDS OF CRIMINAL CONDUCT (AMENDMENT) (NO. 2) ACT,
2021**

ARRANGEMENT OF SECTIONS

Section

1. Short title.
2. Insertion of new sections 38A to 38J.

No. of 2021

**Proceeds of Criminal Conduct
(Amendment) (No. 2) Act, 2021**

**Virgin
Islands**

I Assent

**Governor
, 2021**

VIRGIN ISLANDS

No. of 2021

A Bill for

An Act to amend the Proceeds of Criminal Conduct Act, 1997 to make provisions specifically for unexplained wealth orders.

[Gazetted , 2021]

ENACTED by the Legislature of the Virgin Islands as follows:

Short title.

1. This Act may be cited as the Proceeds of Criminal Conduct (Amendment) (No. 2) Act, 2021.

Insertion of new
sections 38A to
38J.
No. 5 of 1997

2. The Proceeds of Criminal Conduct Act, 1997 is amended by inserting after section 38 the following new sections:

“Unexplained
wealth orders.

38A. (1) The High Court may, on an application made by the Director of Public Prosecutions, make an unexplained wealth order in respect of any property if the court is satisfied that each of the requirements for the making of the order is fulfilled.

(2) An application for an order shall

- (a) specify or describe the property in respect of which the order is sought; and
- (b) specify the respondent as the person whom the Director of Public Prosecutions thinks, obtained and holds the property, and the person specified may include a person outside the Virgin Islands.

(3) An unexplained wealth order is an order requiring the respondent to provide a statement

- (a) setting out the nature and extent of the respondent's interest in the property in respect of which the order is made;
- (b) explaining how the respondent obtained the property (including, in particular, how any costs incurred in obtaining it were met);
- (c) where the property is held by the trustees of a settlement, setting out such details of the settlement as may be specified in the order; and
- (d) setting out such other information in connection with the property as may be so specified.

(4) The order shall specify

- (a) the form and manner in which the statement is to be given;
- (b) the person to whom it is to be given; and
- (c) the place at which it is to be given or, if it is to be given in writing, the address to which it is to be sent.

(5) The order may, in connection with requiring the respondent to provide the statement mentioned in subsection (3), also require the respondent to produce documents of a kind specified or described in the order.

(6) The respondent shall comply with the requirements imposed by an unexplained wealth order within such period as may be specified by the court, and different periods may be specified in relation to different requirements.

(7) For the purposes of this section and sections 38B-H where an application is made or any action is taken by the Director of Public Prosecutions, such application or action may be made on behalf of

- (a) the Royal Virgin Islands Police Force;
- (b) the Customs Department; or
- (c) the Financial Investigation Agency.

Requirements
for making of
unexplained
wealth order.

38B. (1) The High Court shall make an unexplained order in respect of any property in the following circumstances:

- (a) if the Court is satisfied that there is reasonable cause to believe that
 - (i) the respondent holds the property; and
 - (ii) the value of the property is greater than \$100,000;
- (b) if the Court is satisfied that there are reasonable grounds for suspecting that the known sources of the respondent's lawfully obtained income would have been insufficient for the purposes of enabling the respondent to obtain the property; and
- (c) if the Court is satisfied that there are reasonable grounds for suspecting that
 - (i) the respondent is, or has been, involved in a serious crime or the commission of any financial or money laundering crime under the Act or otherwise, whether in the Virgin Islands or elsewhere; or
 - (ii) a person connected with the respondent is, or has been, so involved.

(2) It is not relevant for the purposes of subsection (1)(a)(i)

- (a) whether or not there are other persons who also hold the property;

- (b) whether the property was obtained by the respondent before or after the coming into force of this section.

(3) For the purposes of subsection (1)(b)

- (a) regard is to be had to any mortgage, charge or other kind of security that it is reasonable to assume was or may have been available to the respondent for the purposes of obtaining the property;
- (b) it is to be assumed that the respondent obtained the property for a price equivalent to its market value;
- (c) income is "lawfully obtained" if it is obtained lawfully under the laws of the country from where the income arises;
- (d) "known" sources of the respondent's income are the sources of income, whether arising from employment, assets or otherwise, that are reasonably ascertainable from available information at the time of the making of the application for the order;
- (e) where the property is an interest in other property comprised in a settlement, the reference to the respondent obtaining the property is to be taken as if it were a reference to the respondent obtaining direct ownership of such share in the settled property as relates to, or is fairly represented by, that interest.

(4) Where the property in respect of which the order is sought comprises more than one item of property, the reference in subsection (1)(a)(ii) to the value of the property is to the total value of those items.

Effect of order:
cases of non-
compliance.

38C. (1) This section applies in a case where the respondent fails, without reasonable excuse, to comply with the requirements imposed by an unexplained wealth order in respect of any property before the end of the response period.

(2) The property is to be presumed to be recoverable

property for the purposes of any proceedings taken in respect of the property, unless the respondent adduces sufficient evidence to rebutt that presumption.

(3) The presumption in subsection (2) applies in relation to property

(a) only so far as relating to the respondent's interest in the property; and

(b) only if the value of that interest is greater than the sum specified in section 38B(1)(a)(ii).

(4) It is for the court hearing the proceedings in relation to which reliance is placed on the presumption to determine the matters under this subsection.

(5) The "response period" is whatever period the court specifies under section 38A(6) as the period within which the requirements imposed by the order are to be complied with (or the period ending the latest, if more than one is specified in respect of different requirements).

(6) For the purposes of subsection (1)

(a) a respondent who purports to comply with the requirements imposed by an unexplained wealth order is not to be taken to have failed to comply with the order; and

(b) where an unexplained wealth order imposes more than one requirement on the respondent, the respondent is to be taken to have failed to comply with the requirements imposed by the order unless each of the requirements is complied with or is purported to be complied with.

(7) Subsections (8) and (9) apply in determining the respondent's interest for the purposes of subsection (3) in a case where the respondent to the unexplained wealth order is connected with another person who is, or has been, involved in a crime under section 38B(1)(c)(i).

(8) In a case under subsection (7), the respondent's interest is to be taken to include any interest in the property of the

person involved in crime with whom the respondent is connected.

(9) Where an unexplained wealth order is made in respect of property comprising more than one item of property, the reference in section 38B(1)(a)(ii) to the value of the respondent's interest in the property is to the total value of the respondent's interest in those items.

Effect of order:
cases of
compliance or
purported
compliance.

38D. (1) This section applies in a case where, before the end of the response period, the respondent complies, or purports to comply, with the requirements imposed by an unexplained wealth order in respect of any property in relation to which the order is made.

(2) If an interim freezing order has effect in relation to the property, the Director of Public Prosecutions shall determine what enforcement or investigatory proceedings, if any, it considers ought to be taken in relation to the property.

(3) A determination under subsection (2) shall be made within the period of 60 days starting with the day of compliance.

(4) If the determination under subsection (2) is that no further enforcement or investigatory proceedings ought to be taken in relation to the property, the Director of Public Prosecutions must notify the High Court of that fact as soon as reasonably practicable (and in any event before the end of the 60 day period mentioned in subsection (3)).

(5) If there is no interim freezing order in effect in relation to the property, the Director of Public Prosecutions may (at any time) determine what, if any, enforcement or investigatory proceedings it considers ought to be taken in relation to the property.

(6) A determination under this section to take no further enforcement or investigatory proceedings in relation to any property does not prevent such proceedings being taken subsequently, whether as a result of new information or otherwise, in relation to the property.

(7) For the purposes of this section

(a) the respondent complies with the requirements imposed by an unexplained wealth order only if all of the requirements

are complied with;

- (b) references to the day of compliance are to the day on which the requirements imposed by the order are complied with or, if the requirements are complied with over more than one day, the last of those days; and
- (c) where an order requires the sending of information in writing to, or the production of documents at, an address specified in the order, compliance with the order, in so far as relating to that requirement occurs when the written information is received, or the documents are produced, at that address,

and in paragraphs (a) to (c) references to compliance include purported compliance.

(8) In this section “enforcement or investigatory proceedings” means any proceedings in relation to property taken under

- (a) confiscation proceedings; or
- (b) civil recovery of the proceeds of unlawful conduct.

Offence.

38E. (1) A person commits an offence if, in purported compliance with a requirement imposed by an unexplained wealth order, the person

- (a) makes a statement that the person knows to be false or misleading in a material particular; or
- (b) recklessly makes a statement that is false or misleading in a material particular.

(2) A person who commits an offence under this section is liable on conviction on indictment, to imprisonment for a term not exceeding 7 years.

Statements.

38F. (1) A statement made by a person in response to a requirement imposed by an unexplained wealth order may not be used in evidence against that person in criminal proceedings.

(2) Subsection (1) does not apply

- (a) on a prosecution for an offence under section 38E;
- (b) on a prosecution for an offence under section 110 of the Criminal Code for perjury;
- (c) on a prosecution for some other offence where, in giving evidence, the person makes a statement inconsistent with the statement mentioned in subsection (1).

(3) A statement may not be used by virtue of subsection (2)(d) against a person unless

- (a) evidence relating to it is adduced; or
- (b) a question relating to it is asked,

by the person or on the person's behalf in proceedings arising out of the prosecution.

Disclosure of
information,
copying of
documents, etc.

38G. (1) An unexplained wealth order has effect in spite of any restriction on the disclosure of information, (however imposed).

(2) Rights in connection with privileged information, questions and material apply in relation to requirements imposed by an unexplained wealth order as they apply in relation to requirements imposed under a disclosure order.

(3) The enforcement authority may take copies of any documents produced by the respondent in connection with complying with the requirements imposed by an unexplained wealth order.

(4) Documents produced under subsection (3) may also be retained for so long as it is necessary to retain them (as opposed to a copy of them) in connection with an investigation in relation to the property in respect of which the unexplained wealth order is made.

(5) Where the enforcement authority has reasonable grounds to believe that the documents

- (a) may need to be produced for the purposes of any legal proceedings, and
- (b) might otherwise be unavailable for those purposes,

they may be retained until the proceedings are concluded.

(6) For the purposes of this section "enforcement authority" means

- (a) the Royal Virgin Islands Police Force;
- (b) the Customs Department;
- (c) the Financial Investigation Agency; or
- (d) the Director of Public Prosecutions.

Holding of
property: trusts
and company
arrangements etc.

38H. (1) This section applies for the purposes of sections 38A and 38B.

(2) The cases in which a person is to be taken to "hold" property include those where such person

- (a) has effective control over the property;
- (b) is the trustee of a settlement in which the property is comprised;
- (c) is a beneficiary (whether actual or potential) in relation to such a settlement.

(3) A person is to be taken to have "effective control" over property if, from all the circumstances, it is reasonable to conclude that the person

- (a) exercises;
- (b) is able to exercise; or
- (c) is entitled to acquire,

direct or indirect control over the property.

(4) Where a person holds property by virtue of

subsection (2) references to the person obtaining the property are to be read accordingly.

(5) References to a person who holds or obtains property include any body corporate, whether incorporated or formed under the law of the Virgin Islands or in a country or territory outside the Virgin Islands.

Supplementary. **38I. (1)** An application for an unexplained wealth order may be made without notice.

(2) Rules of court may make provision as to the practice and procedure to be followed in connection with proceedings relating to unexplained wealth orders before the High Court.

(3) An application to the High Court to discharge or vary an unexplained wealth order may be made by

- (a) the Director of Public Prosecutions, or
- (b) the respondent.

(4) The High Court

- (a) may discharge the order; or
- (b) may vary the order.

Application for interim freezing order. **38J. (1)** This section applies where the High Court makes an unexplained wealth order in respect of any property.

(2) The court may make an interim freezing order in respect of the property if the court considers it necessary to do so for the purposes of avoiding the risk of any recovery order that might subsequently be obtained being frustrated.

(3) An interim freezing order is an order that prohibits the respondent to the unexplained wealth order, and any other person with an interest in the property, from in any way dealing with the property.

(4) An interim freezing order

- (a) may be made only on the application of the Director of Public Prosecutions that applied for the unexplained wealth order to which the interim freezing order relates,

- (b) must be made in the same proceedings as those in which the unexplained wealth order is made, and
- (c) may be combined in one document with the unexplained wealth order.

(5) If an application for an unexplained wealth order in respect of any property is made without notice, an application for an interim freezing order in respect of the property must also be made without notice.”.

Passed by the House of Assembly this day of , 2021.

Speaker.

Clerk of the House of Assembly.

OBJECTS AND REASONS

This Bill seeks to amend the Proceeds of Criminal Conduct Act, 1997, to make provisions for unexplained wealth orders.

Clause 1 provides for the short title.

Clause 3 provides for the insertion of clause 38A to 38I providing for unexplained wealth orders; the requirement for making such orders; the effects of unexplained wealth orders when there is non-compliance and cases of compliance; offences; statements; disclosure of information; holding of property, trust and company arrangements; supplementary and application for interim freezing order.

Attorney General

No. of 2021

VIRGIN ISLANDS
REGISTER OF INTERESTS ACT, 2021
ARRANGEMENT OF SECTIONS

Section

1. Short title and commencement.
2. Interpretation.
3. Application.
4. Declaration of interests.
5. Register of interests.
6. Duties of the Registrar.
7. Information.
8. Suspension of a member of the House of Assembly.
9. Relationship with Integrity Commission
10. Computer records.
11. Oath of office and confidentiality.
12. Immunity from Suit.
13. Amendment of Schedules.
14. Regulations.
15. Repeal and savings.

SCHEDULE 1
SCHEDULE 2
SCHEDULE 3
SCHEDULE 4
SCHEDULE 5

No. of 2021

Register of Interests Act, 2021

Virgin
Islands

I Assent

Governor.

VIRGIN ISLANDS

No. of 2021

An Act to repeal and replace the Register of Interest Act, 2006 and to give effect to section 112 of the Virgin Islands Constitution Order 2007 (U.K.S.I. 2007 No. 1678) and for matters connected therewith.

[Gazetted , 2021]

ENACTED by the Legislature of the Virgin Islands as follows:

Short title and
commencement.

1. (1) This Act may be cited as the Register of Interests Act, 2021

(2) This Act shall come into force on such date as the Governor may, by Proclamation published in the *Gazette*, appoint.

Interpretation.

2. In this Act, unless the context otherwise requires,

“assets” means all property, including any rights or interests held in beneficial ownership, whether in or outside the Territory;

“child”, in relation to a person in public life, means a person who has not attained the age of eighteen years and who is dependent on the person in public life and includes a child born out of wedlock, an adopted child, a step-child or a child of the family;

“child of the family”, in relation to a person in public life, means any child, who has been accepted and treated by both the person in public life and his or her spouse as a child of their family;

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“Commissioner of Inquiry” means a Commissioner of Inquiry appointed in accordance with section 2 of the Commissions of Inquiry Act;

“declaration” means a declaration of interests under section 4;

“income” includes

- (a) money or money's worth derived from whatever source or acquired, in or outside of the Territory;
- (b) all receipts by way of salary, fees, wages, perquisites, profits, gain, emoluments, rents, interest, commission, bonus, pension, annuity or benefit;

“Integrity Commission” means the Commission established pursuant to the Integrity in Public Life Act 2021;

“interest” includes any assets, income and liabilities;

“liabilities” includes any obligation to pay money, whether in or outside the Territory;

“Member” means the Speaker, the Attorney General or an elected member of the House of Assembly and includes a person appointed to act as Attorney General;

“person in public life” means a person specified in Schedule 1;

Schedule 1

“prescribed” means prescribed by Regulations;

“public body” includes

- (a) the House of Assembly and Cabinet;
- (b) Ministries and Departments of Government;
- (c) a corporation established by an Act for a public purpose or any subsidiary company of that corporation;
- (d) a bank, corporation or company which the Government owns or in which the Government has controlling interest;
- (e) any board, authority, commission, committee, council, trust or other like body established by or under an enactment;

“public officer” has the meaning given to it in section 2 of the Constitution;

U.K.S.I. 2007
No.1678

“public official” means a person who is a member of a public body or a public officer;”

“records” includes any documents in whatever form they are held;

“Register” means the Register of Interests established under section 112(1) of the Virgin Islands Constitution Order 2007;

“Registrar” means the person appointed by the Governor under section 112(1) of the Virgin Islands Constitution Order 2007, to hold or act in the office of Registrar;

“spouse”, in relation to a person in public life and for the purposes of a declaration, means the husband or wife of the person in public life or a person of the opposite sex who is living with the person in public life in the circumstances of husband and wife on the date on which the duty to make the declaration arose, but does not include a husband or wife

- (a) who is living separate and apart from the person in public life; and
- (b) who is a party to proceedings for divorce or judicial separation which were instituted at any time before the date on which the duty to make the declaration arose.

3. This Act applies to every person in public life.

Application.

Declaration of
interests.
Schedule 2

4. (1) A person in public life shall make a declaration in the form set out in Schedule 2

- (a) on the date on which he or she assumes the functions of his or her office, and
- (b) in each subsequent year, on or before the 28th day of February.

(2) Despite subsection (1)(a), where on the day this Act comes into force a person is in public life, the person shall within one month from the date of commencement file a declaration pursuant to this section and thereafter in accordance with subsection (1)(b).

(3) A declaration of interests under this section

- (a) shall be made in respect of interests held on the date on which the duty to make the declaration arose; and

- (b) shall, where required by the registration form, include a declaration in respect of the interests held on that date by a child or spouse of the person in public life.

(4) A person in public life who fails to submit his or her declaration within the period prescribed in subsections (1) or (2) shall be liable to pay the late fee specified in Schedule 3.

(5) A person in public life who contravenes subsections (1) and (2) commits an offence and is liable on summary conviction to a fine not exceeding thousand dollars.

5. (1) The Registrar shall maintain and keep the Register in accordance with this Act and in such format as may be prescribed. Register of interests.

(2) The Register shall contain

- (a) the names, offices and addresses of the persons in public life, and
- (b) the details of declarations made in accordance with this Act.

(3) The Registrar shall, upon payment of the fee prescribed in Schedule 3, permit inspection of the Register, at the request of any member of the public, during normal working hours.

(4) The fee referred to in subsection (3) shall not apply to the persons or class of persons specified in Schedule 4.

(5) A person in public life shall, within one month from the date of any change occurring in relation to the information declared pursuant to section 4, notify the Registrar of such change and provide the Registrar with such details as the Registrar requires.

(6) Where the Registrar is notified of any change in accordance with subsection (5), the Registrar shall amend the register accordingly.

(7) A person in public life who contravenes subsection (5) commits an offence and is liable on summary conviction to a fine not exceeding thousand dollars.

6. (1) Subject to subsections (2) to (4), the Registrar shall enter in the Register, the interests declared in each declaration.

Duties of the Registrar.

(2) Before entering in the Register the interests declared by a person in public life, the Registrar shall, for the purpose of satisfying himself or herself that a full and accurate declaration has been prepared,

Schedule 2

- (a) examine each declaration and ensure that the declaration has been made in the form set out in Schedule 2; and
- (b) obtain from the person in public life such information as in the opinion of the Registrar, would assist him or her in examining a declaration furnished pursuant to this Act.

(3) Where the Registrar is satisfied that an entry in the Register has been made as a result of a fraudulent or materially misleading declaration by a person in public life,

- (a) the Registrar shall
 - (i) mark the entry as cancelled; and
 - (ii) by notice, require the person in public life to make a new declaration in respect of the interests held at the date the fraudulent or materially misleading declaration was made; and
- (b) the Registrar shall require the person in public life to make the new declaration within twenty-eight days from the date of the notice.

(4) The Registrar shall mark as cancelled any entry which has been incorrectly made.

(5) A person in public life who contravenes subsection (3)(b) commits an offence and is liable on summary conviction to a fine not exceeding thousand dollars.

Information.

7. (1) The Registrar may, by notice, require a person in public life to

- (a) supply to him or her such information, and
- (b) produce to him or her such records,

as may be specified in the notice, being information and records the supply and production of which the Registrar considers necessary or desirable for the purpose of enabling the Registrar to carry out his or her functions under this Act.

(2) A notice under subsection (1) shall require the information to be supplied and the records to be produced within such period as may be specified in the notice being not less than fourteen days from the date of the notice.

(3) Where the Registrar gives a notice under subsection (1) to a person **in public life** for the purposes of examining the declaration of that person, the Registrar shall not register the declaration of the person **in public life** unless

- (a) the person **in public life** complies with the notice; or
- (b) before the end of the period allowed for compliance, the person **in public life** shows to the satisfaction of the Registrar that he or she has reasonable grounds for not complying with it.

(4) A person **in public life** whose declaration is being examined, who fails without reasonable excuse to comply with a notice under subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars.

(5) A person **in public life** whose declaration is being examined, who in purported compliance with a notice under subsection (1) knowingly or recklessly supplies information which is false or misleading in a material particular, commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding two years, or both.

8. A member of the House of Assembly who is convicted of an offence under this Act is liable, in addition to any other penalty prescribed by law, to be suspended from sitting and voting in the House of Assembly for such period as the court considers appropriate, not exceeding years from the date of conviction for the offence.

Suspension of a member of the House of Assembly.

9. The Registrar may refer any matter related to integrity to the Commission for advice.

Relationship with Integrity Commission.

10. Where any records are held or kept in electronic form, the power of the Registrar to require the supply of information and production of records shall include powers

Computer records.

- (a) to require any person having charge of, or otherwise concerned with the operation of a computer or associated apparatus which is or has been in use in connection with such information or records, to afford to the Registrar such assistance as he or she may reasonably require; and

- (b) to require the records to be produced or copied in any form which he or she may reasonably request.

Oath of office
and
confidentiality.

11. (1) The Registrar and any person appointed or designated to assist the Registrar in the performance of his or her duties under this Act

Schedule 5

- (a) shall, before assuming office, subscribe to the oath of confidentiality referred to in Schedule 5;
- (b) shall not, save in accordance with this Act or otherwise in relation to any court order or a written request from a Commissioner of Inquiry or the Integrity Commission disclose information
 - (i) relating to any declaration or matter in the Register; or
 - (ii) that he or she has acquired in the course of or in relation to his or her duties or in the exercise of any powers or performance of duties under this Act.

(2) Where a request for information is made to the Registrar pursuant to subsection (1)(b), the Registrar may provide information that in his or her opinion is strictly necessary to fulfil the request and upon such conditions as to the preservation of confidentiality after the purpose for same has been exhausted as the Registrar deems appropriate.

(3) The oath of confidentiality referred to in subsection (1)(a) shall be taken before a Magistrate or the Registrar of the High Court.

(4) Where the Registrar or any other person appointed or designated to assist him or her contravenes subsection (1)(b), he or she commits an offence and is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding two thousand dollars, or both.

Immunity from
suit.

12. No action shall be brought against the Registrar or a person acting under the direction of the Registrar for an act done or omitted to be done in the execution of his or her functions under this Act, unless it is shown that he or she acted in bad faith.

Amendment of
Schedules.

13. The Governor may amend the Schedules by Order published in the *Gazette*.

Regulations.

14. (1) The Governor may make Regulations not inconsistent with this Act, for giving effect to the provisions of this Act.

(2) Without limiting the generality of subsection (1), Regulations may provide for the following matters:

- (a) the format of the Register of Interest; and
- (b) prescribing anything that is required to be prescribed by this Act.

(3) Regulations made under this Act shall be subject to an affirmative resolution of the House of Assembly.

Repeal and
savings.

15. (1) The Register of Interest Act, 2006 is repealed.

Act No. 5 of
2006

(2) Any act, direction or thing duly done by any person under the repealed Act which is in force on the commencement date shall, on the commencement of this Act, be deemed to have been done under this Act to the extent of its consistency with this Act.

SCHEDULE 1

[Section 2]

PERSONS IN PUBLIC LIFE

1. Members of the House of Assembly
2. Members of the board or other governing body of a public body and other officers (by whatever name called)
3. All Public Officers

SCHEDULE 2

[Section 4(1)]

REGISTRATION FORM FOR DECLARATION OF INTERESTS

REGISTRATION OF FINANCIAL INTERESTS

REGISTRATION FORM

The main purpose of the Register of Interests is to provide information of any pecuniary interest or other material benefit which a person in public life receives which might reasonably be thought by others to influence his or her actions, speeches or votes in the House of Assembly (in the case of a Member), or actions taken in his or her capacity as a person in public life. For the details of the information which is required to be registered, please refer first to the explanatory notes in each section of the Form.

If there is not enough space in any section of this Form for the information required, additional sheets may be attached to it; but each such sheet should carry the declarant's signature.

Subsequent changes or additions to your entry should be notified to the Registrar within one month of any changes occurring.

NAME (Block capitals, please):

CONSTITUENCY (Where appropriate):

1. DIRECTORSHIPS

Do you have any remunerated or unremunerated directorships in any company?

YES/NO (Please delete as appropriate)

If yes, please list the names of the companies, briefly stating the nature of the business of the company in each case.

Notes: (i) You should include directorships which are individually unremunerated but where remuneration is paid through another company in the same group.

(ii) In this category and category 2, "remunerated" should be read as including allowances or benefits.

2. REMUNERATED EMPLOYMENT, OFFICE, PROFESSION, ETC.

Do you have any employment, office, trade, profession or vocation (apart from being a person in public life) for which you are remunerated or in which you have any pecuniary interest?

YES/NO (Please delete as appropriate)

If yes, please set out the details. Actual amounts of remuneration need not be stated. When registering employment with a company or firm, please briefly indicate the nature of its business.

3. CLIENTS

Does any of the paid employment registered in categories 1 or 2 entail the provision to clients of services which depend essentially upon or arise out of your position as a person in public life (see Note (i) below)?

YES/NO (Please delete as appropriate)

If yes, please list all clients to whom you personally provide such services. Please also state in each case the nature of the client's business.

Notes: (i) The services covered by this category include action connected with any parliamentary proceeding, sponsoring meetings or functions in the House of Assembly's building or offices, making representations to Ministers, Members or public officials, accompanying delegations to Ministers, and the provision of advice on parliamentary or public affairs.

(ii) Where you receive remuneration from a company or partnership engaged in consultancy business which itself has clients, you should list any of those clients to whom you personally provide such services or advice, directly or indirectly.

4. SPONSORSHIP

(a) In the case of a Member of the House of Assembly, did you benefit from any sponsorship before your election, where to your knowledge, the financial support in any case exceeded in aggregate \$2,500.00?

YES/NO (Please delete as appropriate)

If yes, please list your sponsor(s). Where a company is named as sponsor, please indicate briefly the nature of its business, and if known, its directors and shareholders.

(b) In the case of a Member of the House of Assembly, do you benefit from any other form of sponsorship or financial or material support?

YES/NO (Please delete as appropriate)

If yes, please give details, including the name of the person, organisation or company providing the support. Where a company is named, please indicate briefly the nature of the business, and if known, its directors and shareholders.

(c) Do the arrangements registered under paragraph 4(b) involve any payment to you or any material benefit or advantage which you personally receive?

YES/NO (Please delete as appropriate)

Notes: (i) You should register under this section any financial or material benefit, direct or indirect; for example the provision of free or subsidised accommodation, or the provision of the services of a research assistant free or at a subsidised salary rate.

(ii) In the case of a Member, you should register money given to you by your election campaign committee and money spent by your election campaign committee in connection with your election with your written permission.

(iii) The answer to question 4(a) need not contain information in respect of elections which took place prior to the enactment of the Register of Interests Act, 2021.

5. GIFTS, BENEFITS AND HOSPITALITY (VIRGIN ISLANDS)

Have you, or your spouse to your knowledge, received any gift of a value greater than \$500.00, or any material advantage of a value greater than
~~1.5 percent of the current salary of an elected Member of the House of Assembly,~~
 from any company, organisation or person within the Virgin Islands which in any way relates to your membership of the House of Assembly or position as a public official?

YES/NO (Please delete as appropriate)

If yes, please give details.

Notes: (i) You should include any hospitality given and services or facilities offered free or at a price below that generally available to members of the public, except that where the advantage is known to be available to all Members of the House of Assembly, it need not be registered.

(ii) You should include not only gifts and material advantages received personally by you and your spouse, but also those received by any

company or organisation in which you (or you and your spouse jointly) have a controlling interest.

6. OVERSEAS VISITS

Have you or your spouse made any overseas visits relating to or in any way arising out of your membership of the House of Assembly **or position as a public official**, where the cost of the visit was not wholly borne by yourself or by public funds?

YES/NO (Please delete as appropriate)

If yes, please list relevant visits in chronological order.

| Countries visited | Dates of visit | Who paid? |
|-------------------|----------------|-----------|
|-------------------|----------------|-----------|

Note: You are not required to register visits undertaken on behalf of the Commonwealth Parliamentary Association. Other categories of overseas visits which are exempt from the requirement to register are listed in the guidance pamphlet on Registration and Declaration of Interests.

7. OVERSEAS BENEFITS AND GIFTS

Have you, or your spouse to your knowledge, received any gift of a value greater than \$500.00 or any material advantage of a value greater than
~~1.5 percent of the current salary of an elected Member of the House of Assembly,~~
 from or on behalf of any foreign Government, organisation or person which in any way relates to your membership of the House of Assembly or position as a public official?

YES/NO (Please delete as appropriate)

If yes, please give details.

Note: Overseas hospitality and travel facilities should be entered under category 6. Otherwise the notes under category 5 apply here also.

8. LAND

Do you have any land, other than any home used solely for the personal residential purposes of you or your family?

YES/NO (Please delete as appropriate)

If yes, please indicate below the nature of the land (e.g. Estate, Farm, Smallholding, Woodland, Residential rented/leasehold land, Commercial rented/leasehold land) and give the registration section, block and parcel number, and the street and number (if appropriate) of the land in each case.

Nature of Land

Location

.....

Registration Section No.:

Block No.:

Parcel No.:

Address:

.....

Registration Section No.:

Block No.:

Parcel No.:

Address:

.....

Registration Section No.:

Block No.:

Parcel No.:

Address:

9. SHAREHOLDINGS

Do you have (either yourself or with or on behalf of your spouse or dependent children) interests in shareholdings in any company or other body which has a nominal value (a) greater than \$25,000.00, or (b) less than \$25,000.00 but greater than 1 percent of the issued shared capital of the company or body?

YES/NO (Please delete as appropriate)

If so, please list each company or body, indicating in each case the nature of its business and whether your holding falls under sub-category (a) or (b) above.

10. MISCELLANEOUS

If, bearing in mind the definition of purpose set out in the introduction to this Form, you have any relevant **financial** interest **or material benefit** which you consider should be disclosed but which do not fall within the nine categories set out above, **including any shareholding which falls below the relevant threshold, a partnership, joint venture or investments such as stocks or bonds, or any other financial assets, including an asset held in trust, or an intellectual property interest, such as a patent or copyright or any other interest that it might reasonably be thought by others to influence your actions or words as a person in public life in the same way as a financial interest**, please list them below:

I declare that the information contained in this declaration is a complete and accurate description of all the interests that I am liable to declare under the Register of Interests Act, 2021.

SIGNATURE:

DATE:

SCHEDULE 3

[Section 4(4), 5(3)]

FEEs

| | |
|--|-------|
| Fee to Inspect the Register | \$100 |
| Failure to submit declaration within the prescribed period | \$500 |

SCHEDULE 4

[Section 5(4)]

PERSONS EXEMPTED FROM FEE TO INSPECT REGISTER

Auditor General
 Members of the Integrity Commission
 Commissions of Inquiry
 Police Officers

SCHEDULE 5

[Section 10(1)]

OATH OF CONFIDENTIALITY**FORM OF OATH**

I, _____, being the Registrar of Interests/a person appointed/designated to assist the Registrar of Interests in the performance of his or her duties under the Register of Interests Act, 2021, solemnly swear/affirm that I shall keep confidential all declarations and other information in connection with or relative to a person in public life and the Register of Interests which has come to my knowledge in my capacity as Registrar of Interests/a person appointed/designated to assist the Registrar of Interests or in relation to such office that I hold and I shall not disclose such declaration or other information except as authorised by and in accordance with law.

So help me God (omit if affirming)

Sworn/Affirmed before me this _____ day of _____, 202 .

OBJECTS AND REASONS

This Bill seeks to repeal and replace the Register of Interests Act, 2006 (No. 5 of 2006). It also seeks to provide for all persons in public life to make a declaration of their interests in the form prescribed.

Clause 1 sets out the short title and commencement of the Act.

Clause 2 would define certain terms used throughout the Act.

Clause 3 would provide for the Act to apply to all persons in public life.

Clause 4 would provide for a person in public life shall make a declaration of their interests within one month of the commencement of the Act and where the person becomes a person in public life after the commencement of this Act, on the date on which he or she assumes the functions of his or her office, and thereafter on each subsequent year, on or before the 28th day of February. **Failure to file a declaration would be an offence and a late fee would be payable where a declaration is filed out of time.**

Clause 5 would provide for the Register of Interest to be maintained and kept in accordance with the Act. The Register would contain the names, offices and addresses of the persons in public life, as well as the details of declarations made in accordance with the Act. The Register would be accessible for a prescribed fee, however certain officers will be exempt from the prescribed fee. A person in public life would also be required to notify the Registrar of any changes in the information declared.

Clause 6 would provide for the duties of the Registrar which would include entering the interests declared in each declaration in the Register, examining each declaration to ensure that it complies with this Act, obtaining information from the person in public life to assist in examining a declaration furnished. It would also provide for the Registrar to cancel an entry in the Register where the entry has been made as a result of a fraudulent or materially misleading declaration and require the person in public life to make a new declaration. Failure to make a new declaration would be an offence.

Clause 7 would provide for the Registrar to give notice to a person in public life to supply the Registrar with such information, and to produce such records as the Registrar may require for the purposes of examining the declaration of that person.

Clause 8 would provide for an additional penalty to apply to a member of the House of Assembly where that member is convicted of an offence under the Act. It would provide for the member to be suspended from sitting and voting in the House in the abovementioned circumstances.

Clause 9 would give the Registrar the power to refer any matter related to integrity to the Integrity Commission for advice.

Clause 10 would give the Registrar the power to request any information and records held or kept in electronic form to assist with the execution of his or her duties.

Clause 11 would provide for the oath of office and confidentiality.

Clause 12 would provide for the immunity from suit for the Registrar or a person acting under the direction of the Registrar for acts done in good faith in the execution of duties their duties.

Clause 13 would provide for the Schedules to be amended, by Order.

Clause 14 would provide for the making of regulations.

Clause 15 would provide for the repeals and savings.

Premier

No. 2 of 2021

VIRGIN ISLANDS

REGISTER OF INTERESTS (AMENDMENT) ACT, 2021

ARRANGEMENT OF SECTIONS

Section

1. Short title.
2. Section 2 amended.
3. Section 9 amended.
4. Section 13 amended.

No. 2 of 2021

**Register of Interests (Amendment)
Act, 2021**

**Virgin
Islands**

I Assent
(Sgd.) John Rankin,
Governor.
12th March, 2021

VIRGIN ISLANDS

No. 2 of 2021

An Act to amend the Register of Interests Act, 2006 (No. 5 of 2006) and to provide for other matters connected therewith.

[Gazetted 15th March, 2021]

ENACTED by the Legislature of the Virgin Islands as follows:

Short title.

1. This Act may be cited as the Register of Interests (Amendment) Act, 2021.

Section 2
amended.
No. 5 of 2006

2. The Register of Interests Act 2006 (referred to in this Act as “the principal Act”) is amended in section 2 by inserting the following definition directly after the definition of “child of the family”:

Cap 237 “Commissioner of Inquiry” means a Commissioner of Inquiry appointed in accordance with section 2 of the Commissions of Inquiry Act;”.

Section 9
amended.

3. The principal Act is amended in section 9

(a) in subsection (1)

(i) by deleting the word “or” in paragraph (b); and

(ii) by inserting after paragraph (b) the following new paragraph:

“(ba) on the written request of a Commissioner of Inquiry; or”; and

(b) by inserting after subsection (1) the following new subsection:

“(1a) Where a request is made to the Registrar for inspection of the Register pursuant to subsection (1)(a) to (c), the Registrar may provide copies or extracts thereof but only of those parts of the Register that in his opinion are strictly necessary to fulfill the request and upon such conditions as to the preservation of confidentiality after the purpose for same has been exhausted as he shall deem appropriate.”.

4. The principal Act is amended in section 13

Section 13
amended.

- (a) in subsection (1)(b) by inserting the words “or a written request from a Commissioner of Inquiry” after the words “court order”; and
- (b) by inserting after subsection (1) the following new subsection:

“(1a) Where a request for information is made to the Registrar pursuant to subsection (1)(b), the Registrar may provide information that in his opinion is strictly necessary to fulfill the request and upon such conditions as to the preservation of confidentiality after the purpose for same has been exhausted as he shall deem appropriate.”.

Passed by the House of Assembly this 4th day of March, 2021.

(Sgd.) Julian Willock,
Speaker.

(Sgd.) Phyllis Evans,
Clerk of the House of Assembly.

No. 39 of 2021

VIRGIN ISLANDS
PUBLIC PROCUREMENT ACT, 2021
ARRANGEMENT OF SECTIONS

Section

PART I
PRELIMINARY

1. Short title and commencement.
2. Interpretation.
3. Application and Objectives.
4. International obligations of the Virgin Islands relating to procurement.
5. Organisation of public procurement.

PART II
METHODS OF PROCUREMENT AND THEIR CONDITIONS FOR USE:
SOLICITATION AND NOTICES OF PROCUREMENT

6. Methods of procurement.
7. General rules applicable to the selection of a procurement method.
8. Conditions for the use of methods of procurement under Part IV.
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10. Solicitation in open tendering.
11. Solicitation in restricted tendering, request for quotations and single source.
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PART III
OPEN TENDERING

13. Procedures for soliciting tenders.
14. Contents of invitation to tender.
15. Provision of solicitation documents.
16. Contents of solicitation documents.
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18. Period of effectiveness of tenders: modification and withdrawal of tenders.
19. Opening tenders.

- 20. Examination and evaluation of tenders.
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PART IV PROCEDURES FOR RESTRICTED TENDERING, REQUESTS FOR QUOTATIONS AND SINGLE SOURCE PROCUREMENT

- 22. Restricted tendering.
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- 25. Request for proposals without negotiation.
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- 38. Qualifications of tenderers.
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43. Rules concerning applications.
44. Clarifications and modifications of solicitation documents.
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46. Tender securities.
47. Contractors' Registration and Pre-qualification proceedings.
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51. Acceptance of the successful submission and entry into force of the procurement contract.
52. Public notice of the award of a procurement contract or framework agreement.
53. Confidentiality.
54. Documentary record of procurement proceedings.
55. Integrity and code of conduct.
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58. Transitional provisions.

SCHEDULE

No. 39 of 2021

Public Procurement Act, 2021

Virgin
Islands**I Assent****(Sgd.) John J. Rankin, CMG,****Governor****6th December, 2021****VIRGIN ISLANDS****No. 39 of 2021**

An Act to make provision for the regulation of public procurement providing for the fair, equal and equitable treatment of all tenderers and for other connected matters.

[Gazetted 9th December, 2021]

ENACTED by the Legislature of the Virgin Islands as follows:

PART I
PRELIMINARY

Short title and
commencement.

1. (1) This Act may be cited as the Public Procurement Act, 2021.

(2) This Act shall come into force on such date as the Minister may, by Notice published in the *Gazette*, appoint.

Interpretation.

2. (1) In this Act, unless the context otherwise requires,

“accepted contract amount” means the amount of the contract price at the signing of the contract;

S.I. No. 87 of
2005

“Central Tenders Board” means the Board established under section 5;

“consultant” means a natural or legal person providing consulting services;

“consulting services” means services which are of an intellectual and advisory nature provided by firms or individuals using their professional skills, study, design and organise specific projects, advise clients, conduct training or transfer knowledge;

“contractor” means the provider of construction of works;

“currency” includes the monetary unit of account;

“direct solicitation” means solicitation addressed directly to one tenderer or a restricted number of tenderers;

“domestic procurement” means procurement limited to tenderers who are belongers or residents of the BVI or to a BVI company where the majority of the issued share capital is directly or indirectly owned by belongers and which is registered in the BVI pursuant to section 47;

“electronic” means using electronic equipment for the processing (including digital compression) and storage of data which is transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means;

“framework agreement” means an agreement or other arrangement between one or more procuring entities and one or more tenderers which established the terms and conditions under which the tenderer enters into a contract with the procuring entity in the period during which the agreement or arrangement applies;

“goods” means objects of every kind and description including raw materials, products, computer software, software licences and equipment and objects in solid, liquid or gaseous form, and electricity, as well as services incidental to the supply of the goods if the value of those incidental services does not exceed that of the goods themselves;

“local preference” means a margin of preference for the benefit of goods produced in BVI or labour provided by nationals of BVI in accordance with section 40(2);

“Minister” means the Minister responsible for Finance;

“prescribed” means as prescribed by Regulations;

“pre-qualification” means the procedure set out in section 47 to identify, prior to solicitation, tenderers that are qualified;

“pre-qualification documents” means documents issued by the procuring entity under section 47 that set out the terms and conditions of the pre-qualification proceedings;

“pre-selection” means a procedure to identify, prior to solicitation, a limited number of providers of consulting services that best meet the qualification criteria for the procurement concerned;

“pre-selection documents” means documents issued by the procuring entity that set out the terms and conditions of the pre-selection proceedings;

“procurement” or “public procurement” means the acquisition of goods, construction works or services by a procuring entity;

“procurement contract” means a contract concluded between the procuring entity and a supplier or a contractor at the end of the procurement proceedings;

“Procurement Coordinator” means the public officer appointed as the head of the Procurement Unit;

“procurement involving classified information” means procurement in which the procuring entity may be authorised to take measures and impose requirements for the protection of classified information;

“Procurement Appeals Board” means an Appeals Board appointed pursuant to section 27;

“procuring entity” means any Government Ministry, Department, Unit or Agency, or any subdivision or multiplicity thereof, that engages in procurement;

“Procurement Unit” means the Procurement Unit of the Ministry of Finance existing prior to the commencement of this Act;

“publish” includes to publish by electronic means;

“services” means supply of physical services, or other labour, time or effort which may include a tangible end-product produced or supplied as an incident of that labour, time or effort; it may include “consulting services” where the context permits;

“solicitation” means an invitation to tender, present submissions or participate in request for proposals proceedings;

“solicitation document” means a document issued by the procuring entity, including any amendments thereto, that sets out the terms and conditions of the given procurement;

“State-Owned Enterprise” means any legal or corporate entity over which the State exercises a dominant influence by virtue of its ownership of it, its financial participation therein, or the rules which govern it. Such dominant influence shall be deemed to exist where the State holds the majority of the entity's subscribed capital, controls the majority of the votes attaching to shares issued by the entity, or can appoint more than half of the entity's administrative, management or supervisory body.

“submission” means a tender, a proposal, an offer, a quotation and a bid referred to collectively or generically;

“supplier” means the provider for the supply of goods and/or services;

“tender security” means a security required from tenderers by the procuring entity and provided to the procuring entity to secure the fulfilment of any obligation referred to in and includes such arrangements as bank guarantees, surety bonds, standby letters of credit, cheques for which a bank is primarily liable, cash deposits, promissory notes and bills of exchange and for the avoidance of doubt, the term excludes any security for the performance of the contract;

“tenderer” means, according to the context, any potential party or any party to the procurement proceedings with the procuring entity;

“works” means all works associated with the construction, reconstruction, demolition, repair, maintenance or renovation of a building or structure, or any construction works such as railways, roads, highways, site preparation, excavation, installation of equipment and materials, decoration, as well as physical services incidental to works, if the value of those services does not exceed that of the works themselves; and

“written” or “in writing” means any expression consisting of words or figures which can be read, reproduced and subsequently communicated. It may include information which is transmitted and stored by electronic means.

(2) For the purpose of this Act, direct solicitation does not include solicitation addressed to a limited number of tenderers following pre-qualification or pre-selection proceedings.

3. (1) This Act applies to all procuring entities and subject to subsection (2) all State-Owned Enterprises.

Application and Objectives.

(2) Notwithstanding subsection (1), a State-Owned Enterprise may conduct procurement in accordance with its own procurement rules and regulations where those rules and regulations have been determined by the Financial Secretary to be consistent with this Act.

(3) Public procurement covers all procurement except for procurement of the following works, goods and services:

- (a) works, goods and services of a sensitive nature for use in national security or defence;
- (b) services for
 - (i) advertising;

- (ii) cultural events;
- (iii) employment in the Public Sector;
- (iv) financial instruments;
- (v) legal work;
- (vi) medical work or facilities;
- (vii) pension funds;
- (viii) travel and accommodation;
- (ix) ministerial advisers;
- (c) goods and works
 - (i) artwork;
 - (ii) existing buildings;
 - (iii) international commodities; and
 - (iv) land.

(4) In applying this Act, procuring entities and State-Owned Enterprises shall seek to

- (a) maximise, the economy and efficiency in public procurement;
- (b) foster and encourage participation in public procurement proceedings by tenderers thereby promoting international trade;
- (c) promote competition among tenderers for the supply of the subject matter of the public procurement;
- (d) provide for the fair, equal and equitable treatment of all tenderers;
- (e) ensure that BVI tenderers are provided with ample procurement opportunities in order to encourage and support national development;

- (f) promote the integrity of, and fairness and public confidence in, the public procurement process;
- (g) achieve transparency in the procedures relating to public procurement.

4. To the extent that this Act conflicts with an obligation of the Virgin Islands under or arising out of any

International obligations of the Virgin Islands relating to procurement.

- (a) treaty or other form of agreement to which it is a party with one or more other States or Territory; or
- (b) agreement entered into by the Virgin Islands with an intergovernmental international financing institution,

the requirements of the treaty or agreement shall prevail, but in all other respects the procurement shall be governed by this Act.

5. (1) Subject to any policy direction of the Minister, the Financial Secretary is responsible for the administration of this Act, including implementation of the Government's public procurement policies, particularly with regard to public expenditure.

Organisation of public procurement.

(2) There is established by this Act a Central Tenders Board which shall comprise

- (a) the Financial Secretary or his or her representative, who shall be the Chairperson of the Central Tenders Board;
- (b) the Attorney General or his or her representative;
- (c) the Director of Public Works or his or her representative;
- (d) the Permanent Secretary in the Ministry responsible for the subject matter of the particular tender or his or her representative;
- (e) the Permanent Secretary who is, for the time being, a member by virtue of subsection (4) or his or her representative.

(3) For the purposes of subsection (2)(a) to (e), the representative shall be a senior officer, including a Deputy, a Deputy Secretary, an Assistant Secretary or a person approved by the Chairperson of the Central Tenders Board.

(4) For the purposes of subsection (2)(e) membership shall be rotated among the Permanent Secretaries, in such order as may be determined by the Minister.

(5) The Central Tenders Board is responsible for

- (a) reviewing the legality of the evaluation of tenders and proposals by a procuring entity exceeding the prescribed threshold amount and making recommendations to Cabinet for the award of such contracts;
- (b) the registration and classification of suppliers, contractors and consultants who participate in the public sector procurement system;
- (c) recommending policy and legislation to the Financial Secretary on public sector procurement procedures;
- (d) promoting and sponsoring the development of procurement professionals;
- (e) adopting standard solicitation documents for any method of procurement and any supplemental documents and templates;
- (f) causing the establishment and maintenance of a Public Procurement website to provide general procurement information and, at such time as is appropriate, a platform for the conduct of electronic procurement and the development appropriate electronic procurement tools;
- (g) reviewing international developments in environmental and sustainable procurement and adopting policies and tools for application in BVI;
- (h) advising the Financial Secretary on the consistency with this Act of the procurement rules and regulations of State-Owned Enterprises; and
- (i) any other functions the Minister may assign.

(6) The Procurement Unit

- (a) is responsible for carrying out the administrative work necessary to support the duties of the Central Tenders Board;

- (b) is the national contact point for public sector procurement;
- (c) is the designated feedback and reporting mechanism for the public sector procurement system;
- (d) advises the Central Tenders Board on the development of policy, legislation, and procedure related to the public sector procurement system;
- (e) carries out procurement in accordance with subsection (10);
- (f) oversees procurement carried out by the Procurement Committee; and
- (g) is responsible for any other functions as may be prescribed.

(7) The Procurement Coordinator shall be the head of the Procurement Unit and secretary to the Central Tenders Board.

(8) Subject to the provisions of the schedule to this Act and to such Regulations as may be prescribed, the Central Tenders Board shall regulate its own proceedings.

Schedule

(9) Subject to subsection (10), a procuring entity shall engage in the procurement of goods, works or services with an estimated value not exceeding the prescribed threshold.

(10) For the procurement of goods, works or services with an estimated value exceeding the prescribed threshold amount, the Procurement Unit shall conduct the procurement on behalf of any Government Ministry, department or any other agency.

(11) Each Government Ministry, department or other agency shall establish a Procurement Committee mandated to

- (a) develop an annual procurement plan for submission to the Procurement Unit;
- (b) act in compliance with relevant policies, guidelines and procedures;
- (c) effect objective evaluation processes with respect to quotations, tenders and requests for proposals;
- (d) facilitate response to contractor inquiries;

- (e) maintain proper records of Committee meetings, including records of the procurement; and
- (f) ensure compliance with reporting obligations.

PART II
METHODS OF PROCUREMENT AND THEIR CONDITIONS FOR
USE: SOLICITATION AND NOTICES OF PROCUREMENT

Methods of
procurement.

6. (1) The procuring entity may conduct procurement of goods, works and services by means of

- (a) open tendering which may be conducted in one or two stages and with or without pre-qualification;
- (b) restricted tendering;
- (c) request for quotations;
- (d) request for proposals without negotiation;
- (e) request for proposals with consecutive negotiations; and
- (f) single source procurement,

subject to such requirements and conditions as may be prescribed for the appropriate use of each method of procurement.

(2) Open tendering may be held in two stages in the following cases:

- (a) when it is not feasible to define fully the technical or contractual aspects of the procurement to elicit competitive tenders; and
- (b) when, because of the complex nature of the goods, works or services to be procured, the contracting entity wishes to consider various technical or contractual solutions, and to discuss with tenderers the relative merits of those variants before deciding on the final technical or contractual specifications.

(3) The procuring entity shall procure consulting services using either the request for proposals without negotiation method or the request for proposals with consecutive negotiations in the prescribed manner.

(4) The procuring entity may procure consulting services from individual consultants based on relevant experience, qualifications and capability to provide the services and selection may be made competitively by comparing those attributes.

(5) In some circumstances, individual consultants may be selected on a single source basis with due justification subject to such requirements and conditions as may be prescribed for the appropriate use of individual consultants.

(6) The procuring entity may engage in such framework agreement procedure as may be prescribed.

7. (1) Except as otherwise provided for in section 8, a procuring entity shall conduct procurement by means of open tendering.

General rules applicable to the selection of a procurement method.

(2) A procuring entity may use a method of procurement other than open tendering only in accordance with section 8 and shall select the other method of procurement to accommodate the circumstances of the procurement concerned and shall seek to maximise competition to the extent practicable.

(3) If the procuring entity uses a method of procurement other than open tendering, it shall include in the record required under section 54 a statement of the reasons and circumstances upon which it relied to justify the use of that method.

8. (1) The procuring entity may engage in procurement by means of restricted tendering in accordance with section 22 when

Conditions for the use of methods of procurement under Part IV.

- (a) the subject matter of the procurement, by reason of its highly complex or specialised nature, is available only from a limited number of tenderers; or
- (b) the time and cost required to examine and evaluate a large number of tenders would be disproportionate to the value of the subject matter of the procurement.

(2) A procuring entity may engage in procurement by means of a request for quotations in accordance with section 23 for the procurement of routine works and maintenance or readily available goods or services that are not specially produced or provided to the particular description of the procuring entity and for which there is an established market, so long as the estimated value of the procurement contract is less than the prescribed threshold amount.

(3) A procuring entity may engage in single source procurement in accordance with section 24 in the following exceptional circumstances

- (a) where, for reasons of extreme urgency brought about by unforeseeable events not attributable to the procuring entity,

the products or services could not be obtained in time by means of open or restricted tendering;

- (b) for additional deliveries of goods or services by the original supplier, to whom the contract was awarded under a competitive process, where
 - (i) a change of supplier would compel the contracting entity to procure equipment or services not meeting requirements of inter-changeability with already existing equipment or services procured under the initial procurement and such separation would cause significant inconvenience or substantial duplication of costs to the contracting entity; or
 - (ii) where no advantage would be gained by further competition,

except that the total value of contracts awarded for the additional services shall not exceed fifty percent of the amount of the original contract;

- (c) the subject matter of, the procurement
 - (i) is for proprietary goods or services obtainable from only a single source; or
 - (ii) is available only from a particular tenderer, or a particular tenderer has exclusive rights in respect of the subject matter of the procurement, such that no reasonable alternative or substitute exists, and the use of any other procurement method would therefore not be possible;
- (d) the procuring entity determines that the use of any other method of procurement is not appropriate for the protection of the national security of the Virgin Islands;
- (e) where there is an emergency and the products or services cannot be obtained by the procuring entity, in time by means of open or restricted tendering; or
- (f) for assignments with an estimated value not exceeding \$15,000.

(4) For the purposes of paragraph (e), procurement during an emergency shall, as far as possible, be limited to the period of the emergency.

- (5) In this section, emergency includes
- (a) a declared period of public emergency;
 - (b) a public health emergency, including a pandemic;
 - (c) natural disasters; or
 - (d) any other exceptional circumstances which the Cabinet may prescribe.

9. (1) The procuring entity may engage in the procurement of consulting services by means of request for proposals without negotiation in accordance with section 25 where the procuring entity needs to consider the financial aspects of proposals separately and only after completion of examination and evaluation of the quality and technical aspects of the proposals.

Conditions for the use of methods of procurement under Part V.

(2) A procuring entity may engage in the procurement of consulting services by means of request for proposals with consecutive negotiations in accordance with section 26 where the procuring entity needs to consider the financial aspects of proposals separately and only after completion of examination and evaluation of the quality and technical aspects of the proposals, and it assesses that consecutive negotiations with consultants are needed in order to ensure that the financial terms and conditions of the procurement contract are acceptable to the procuring entity.

10. (1) An invitation to tender in open tendering shall be published in the prescribed manner.

Solicitation in open tendering.

(2) The invitation shall also be published internationally, so as to be widely accessible to international tenderers.

(3) This section shall not apply where the procuring entity engages in pre-qualification proceedings in accordance with section 47.

(4) The procuring entity shall not be required to cause the invitation to be published in accordance with subsection (2) in the case of domestic procurement in accordance with section 37.

11. (1) When the procuring entity engages in procurement by means of restricted tendering on the grounds specified

Solicitation in restricted tendering, request for quotations and single source.

- (a) in section 8(1)(a), it shall solicit tenders from all tenderers from which the subject matter of the procurement is available;

- (b) in section 8(1)(b), it
 - (i) shall select tenderers from which to solicit tenders in a non-discriminatory manner and in a sufficient number to ensure effective competition; and
 - (ii) may in the case of works select such tenderers from among those registered under the Contractors' Registration and Classification System referred to in section 47(1).

(2) Where the procuring entity engages in procurement by means of request for quotations in accordance with section 8(2), it shall request quotations from as many tenderers as practicable, but from at least three.

(3) Where the procuring entity engages in single source procurement in accordance with section 9(2), it shall solicit a proposal or price quotation from a single tenderer.

Solicitation in request for proposals proceedings.

12. (1) An invitation to participate in request for proposals proceedings shall be published in accordance with section 10(1) and (2), except where

- (a) the procuring entity engages in direct solicitation under the conditions set out in subsection (2); or
- (b) the procuring entity decides not to cause the invitation to be published in accordance with section 10(2) in the circumstances referred to in section 10(4).

(2) The procuring entity shall include in the record required under section 54 a statement of the reasons and circumstances upon which it relied to justify the use of direct solicitation in request for proposals proceedings.

PART III OPEN TENDERING

Procedures for soliciting tenders.

13. The procuring entity shall solicit tenders by causing an invitation to tender to be published in accordance with section 10.

Contents of invitation to tender.

14. The invitation to tender shall include the following information:

- (a) the name and address of the procuring entity;
- (b) a summary of the principal requirements; and

- (c) any other relevant information as may be prescribed.

15. (1) The procuring entity shall provide the solicitation documents to each tenderer that responds to the invitation to tender in accordance with the procedures and requirements specified therein and if pre-qualification proceedings have been engaged in, the procuring entity shall provide a set of solicitation documents to each tenderer that has been pre-qualified and that pays the price, if any, charged for those documents.

Provision of solicitation documents.

(2) The procuring entity shall set out in the solicitation documents the final time and date by which tenders are to be submitted taking into account the time required for the tenderers to prepare and submit their tenders.

(3) The period between receipt of the solicitation documents and the date for submission of tenders shall be no less than that prescribed and shall be the same for all tenderers.

(4) The price that the procuring entity may charge for the solicitation documents shall reflect only the cost of producing and providing them to tenderers.

16. The solicitation documents shall include at least the following information:

Contents of solicitation documents.

- (a) instructions for preparing tenders;
- (b) the technical requirement of the procurement;
- (c) the location and time of completion or delivery;
- (d) the manner, date, place and time for submission of tenders;
- (e) the criteria that will be applied in the ascertainment of the qualifications of tenderers;
- (f) the criteria for evaluation of tenders including any margin of local preference;
- (g) the terms and conditions of the procurement contract; and
- (h) any other relevant information as may be prescribed.

17. (1) Tenders shall be presented in the manner, at the place and by the deadline specified in the solicitation documents.

Presentation of tenders.

(2) A tender shall be presented in writing, and

- (a) if in paper form, signed and placed in a sealed envelope; or

- (b) if in any other form, according to the requirements specified by the procuring entity in the solicitation documents, which shall ensure at least a similar degree of authenticity, security, integrity and confidentiality.

(3) The procuring entity shall provide to the tenderer a receipt showing the date and time when its tender was received.

(4) The procuring entity shall preserve the security, integrity and confidentiality of a tender and shall ensure that the content of the tender is examined only after it is opened in accordance with this Act.

(5) A tender received by the procuring entity after the deadline for presenting tenders shall not be opened and shall be returned unopened to the tenderer that presented it.

Period of effectiveness of tenders: modification and withdrawal of tenders.

18.(1) Tenders shall be in effect during the period of time specified in the solicitation documents.

(2) Prior to the expiry of the period of effectiveness of tenders, the procuring entity may request tenderers to extend the period for an additional specified period of time and a tenderer may refuse the request without forfeiting its tender security.

(3) Tenderers that agree to an extension of the period of effectiveness of their tenders shall extend or procure an extension of the period of effectiveness of tender securities provided by them or provide new tender securities to cover the extended period of effectiveness of their tenders and a tenderer whose tender security is not extended, or that has not provided a new tender security, is considered to have refused the request to extend the period of effectiveness of its tender.

(4) Unless otherwise stipulated in the solicitation documents, a tenderer may modify or withdraw its tender prior to the deadline for presenting tenders without forfeiting its tender security and the modification or notice of withdrawal is effective if it is received by the procuring entity prior to the deadline for presenting tenders.

Opening tenders.

19.(1) Tenders shall be opened at the time specified in the solicitation documents as the deadline for presenting tenders and they shall be opened at the place and in accordance with the manner and procedures specified in the solicitation documents.

(2) All tenderers that have presented tenders, or their representatives, shall be permitted by the procuring entity to attend the opening of tenders.

(3) The name and address of each tenderer whose tender is opened and the tender price shall be announced to those persons present at the opening of tenders, communicated on request to tenderers that have presented tenders but that are not present or represented at the opening of tenders, and included immediately in the record of the procurement proceedings required by section 54.

20. (1) Subject to subsection (2), the procuring entity shall regard a tender as responsive if it conforms to all requirements set out in the solicitation documents in accordance with section 16.

Examination and evaluation of tenders.

(2) The procuring entity may regard a tender as responsive even if it contains minor deviations that do not materially alter or depart from the characteristics, terms, conditions and other requirements set out in the solicitation documents or if it contains errors or oversights that can be corrected without touching on the substance of the tender and any such deviations shall be quantified, to the extent possible, and appropriately taken account of in the evaluation of tenders.

(3) The procuring entity shall reject a tender

- (a) if the tenderer that presented the tender is not qualified;
- (b) if the tenderer that presented the tender does not accept a correction of an arithmetical error made pursuant to section 45;
- (c) if the tender is not responsive;
- (d) in the circumstances referred to in section 49 or 50.

(4) The procuring entity shall evaluate the tenders that have not been rejected in order to ascertain the successful tender, as defined in subsection (5), in accordance with the criteria and procedures set out in the solicitation documents and no criterion or procedure shall be used that has not been set out in the solicitation documents.

(5) The successful tender shall be

- (a) where price is the only award criterion, the tender with the lowest tender price; or
- (b) where there are price and other award criteria, the most advantageous tender ascertained on the basis of the criteria and procedures for evaluating tenders specified in the solicitation documents in accordance with section 40.

(6) When tender prices are expressed in two or more currencies, for the purpose of evaluating and comparing tenders, the tender prices of all tenders shall be converted to the currency specified in the solicitation documents according to the prescribed rates set out in those documents.

(7) Where it has engaged in pre-qualification proceedings pursuant to section 49, the procuring entity may require the tenderer presenting the tender that has been found to be the successful tender pursuant to subsection (5) to demonstrate its qualifications again, in accordance with criteria and procedures conforming to section 38 and the criteria and procedures to be used for such further demonstration shall be set out in the solicitation documents and where pre-qualification proceedings have been engaged in, the criteria shall be the same as those used in the pre-qualification proceedings.

(8) If the tenderer presenting the successful tender is requested to demonstrate its qualifications again pursuant to subsection (7) but fails to do so, the procuring entity shall reject that tender and shall select the next successful tender from among those remaining in effect, in accordance with subsection (4), subject to the right of the procuring entity to cancel the procurement in accordance with section 48.

Prohibition of negotiations with tenderers.

21. With the exception of the circumstance in which all tenders have been rejected because all submitted prices are substantially higher than the existing budget thereby allowing for the possibility of negotiations with the tenderer which had submitted the lowest price on the scope of the procurement, no price negotiations shall take place between the procuring entity and a tenderer with respect to a tender presented by the tenderer.

PART IV PROCEDURES FOR RESTRICTED TENDERING, REQUESTS FOR QUOTATIONS AND SINGLE SOURCE PROCUREMENT

Restricted tendering.

22. (1) The procuring entity shall solicit tenders in accordance with section 11(1).

(2) Except for sections 13 to 15, Part III, shall apply to restricted tendering proceedings.

Request for quotations.

23. (1) The procuring entity shall request quotations in accordance section 11(2) and each tenderer from which a quotation is requested shall be informed whether any elements other than the charges for the subject matter of the procurement itself, such as any applicable transportation and insurance charges, customs duties and taxes, are to be included in the price.

(2) Each tenderer is permitted to give only one price quotation and is not permitted to change its quotation and no negotiations shall take place between the procuring entity and a tenderer with respect to a quotation presented by the tenderer.

(3) The successful quotation shall be the lowest-priced quotation meeting the needs of the procuring entity as set out in the request for quotations.

24. (1) Section 11(3) shall apply to the procedure preceding the solicitation of a proposal or price quotation from a single tenderer. Single source procurement.

(2) The procuring entity shall engage in negotiations with the tenderer from which a proposal or price quotation is solicited unless such negotiations are not feasible in the circumstances of the procurement concerned.

PART V PROCEDURES FOR REQUESTS FOR PROPOSALS WITHOUT NEGOTIATION AND REQUESTS FOR PROPOSALS WITH CONSECUTIVE NEGOTIATIONS

25. (1) The procuring entity shall solicit proposals by causing an invitation to participate in the request for proposals without negotiation proceedings to be published in accordance with section 12(1), unless an exception provided for in that section applies. Request for proposals without negotiation.

(2) The information which shall be included in the invitation, the contents of the request for proposals and the procedures for evaluating the proposals submitted shall be as prescribed.

26. (1) Section 25(1) and (2) shall apply *mutatis mutandis* to procurement conducted by means of request for proposals with consecutive negotiations, except to the extent that those provisions are derogated from in this section. Request for proposals with consecutive negotiations.

(2) Proposals whose technical, quality and performance characteristics meet or exceed the relevant minimum requirements shall be considered to be responsive and the procuring entity shall rank each responsive proposal in accordance with the criteria and procedure for evaluating proposals as set out in the request for proposals and in accordance with the prescribed procedures

PART VI CHALLENGE PROCEEDINGS

27. (1) There is established by this Act, for the purposes of hearing and determining an application for review under sections 30 and 31, a Procurement Appeals Board. Procurement Appeals Board.

(2) The Appeals Board shall comprise three persons, appointed by the Minister one of whom shall be an Attorney-at-Law who is practising or has practised for a period of not less than ten years, and who shall be the Chairperson.

(3) A member of the Appeals Board shall be appointed on such terms and conditions as may be prescribed and the Board shall operate in accordance with such rules of procedure as may be prescribed.

(4) The Minister shall within 7 days of receipt of a request for a review refer the request to the Procurement Appeals Board.

(5) Within 28 days of receiving the referral, the Appeals Board shall hear and determine the application for review.

(6) The Minister may extend the period referred to in subsection (5).

Right to challenge
and appeal.

28. (1) A tenderer that claims to have suffered or claims that it may suffer loss or injury because of the alleged non-compliance of a decision or action of the procuring entity may challenge the decision or action concerned.

(2) Challenge proceedings may be made by way of an application for reconsideration to the procuring entity under section 30, an application for review by a Procurement Appeals Board or an appeal to the High Court.

(3) A tenderer may appeal any decision taken in challenge proceedings in the High Court.

(4) Notwithstanding subsections (1), (2) and (3), a decision by the procuring entity to reject all tenders, proposals and or offers prior to acceptance is not subject to challenge and review.

(5) Any challenge brought under this section shall be brought no later than ten days after the notification referred to in section 51(2).

Effect of a
challenge.

29. (1) The procuring entity shall not take any step that would bring into force a procurement contract or framework agreement in the procurement proceedings concerned

- (a) where it receives an application for reconsideration within the prescribed time limits;
- (b) where it receives notice of an application for review from the Procurement Appeals Board; or
- (c) where it receives notice of an appeal from the High Court.

(2) The prohibition referred to in subsection (1) shall lapse upon the expiration of the prescribed period of time, after the decision of the procuring entity, the Procurement Appeals Board or the High Court has been communicated to the applicant or appellant, as the case may be, to the procuring entity, where applicable, and to all other participants in the challenge proceedings.

(3) The procuring entity may at any time request the Procurement Appeals Board or the High Court to authorise it to enter into the procurement contract or framework agreement on the ground that urgent public interest consideration so justify.

(4) The Procurement Appeals Board, upon consideration of such a request, or of its own motion, may authorise the procuring entity to enter into the procurement contract or framework agreement where it is satisfied that urgent public interest considerations so justify.

(5) The decision of the Procurement Appeals Board and the reasons therefor shall be made part of the record of the procurement proceedings, and shall promptly be communicated to the procuring entity, to the applicant, to all other participants in the challenge proceedings and to all other participants in the procurement proceedings.

30. (1) A tenderer may apply to the procuring entity for a reconsideration of a decision or an action taken by the procuring entity in the procurement proceedings.

Application for reconsideration before the procuring entity.

(2) An application for reconsideration shall be submitted to the procuring entity, in writing, within the prescribed time period and in accordance with the prescribed procedures.

(3) In taking its decision on an application that it has entertained, the procuring entity may overturn, correct, vary or uphold any decision or action taken in the procurement proceedings to which the application relates.

(4) The decision of the procuring entity shall be issued within the prescribed time period after receipt of the application and the procuring entity shall immediately thereafter communicate the decision to the applicant, to all other participants in the challenge proceedings and to all other participants in the procurement proceedings.

(5) If the procuring entity does not communicate its decision to the applicant in accordance with the requirements of subsections (4) and (6), the applicant is entitled immediately thereafter to commence proceedings with the Procurement Appeals Board and where such proceedings are commenced, the competence of the procuring entity to entertain the application ceases.

(6) All decisions of the procuring entity under this section shall be in writing, shall state the action taken and the reasons therefor, and shall promptly be made part of the record of the procurement proceedings, together with the application received by the procuring entity under this section.

Application for review before the Procurement Appeals Board.

31. (1) A tenderer may apply to the Procurement Appeals Board for review of the decision taken by the procuring entity or of the failure of the procuring entity to issue a decision under section 30 within the prescribed time.

(2) An application for review shall be submitted to the Procurement Appeals Board, in writing, within the prescribed time period and in accordance with the prescribed procedures.

(3) The decision of the Procurement Appeals Board shall be issued within the prescribed time period after receipt of the application and the Procurement Appeals Board shall immediately thereafter communicate the decision to the procuring entity, to the applicant, to all other participants in the application for review and to all other participants in the procurement proceedings.

(4) All decisions of the Procurement Appeals Board under this section shall be in writing, shall state the action taken and the reasons therefor and shall promptly be made part of the record of the procurement proceedings, together with the application received by the Procurement Appeals Board.

Rights of participants in challenge proceedings.

32. (1) Any tenderer participating in the procurement proceedings to which the application relates, as well as any governmental authority whose interests are or could be affected by the application, shall have the right to participate in challenge proceedings under this Act and a tenderer duly notified of the proceedings that fails to participate in such proceedings is barred from subsequently challenging under sections 30 and 31 the decisions or actions that are the subject matter of the application.

(2) The procuring entity shall have the right to participate in challenge proceedings under section 31.

(3) The participants in challenge proceedings under this Act shall have the right

- (a) to be present, represented and accompanied at all hearings during the proceedings;
- (b) to be heard;
- (c) to present evidence, including witnesses;
- (d) to request that any hearing take place in public; and

- (e) to seek access to the record of the challenge proceedings subject to section 33.

33. No information shall be disclosed in challenge proceedings and no public hearing under sections 30 and 31 shall take place if doing so would, in the view of the Procurement Appeals Board

Confidentiality in challenge proceedings.

- (a) impair the protection of the national security of the Virgin Islands;
- (b) be contrary to law;
- (c) impede law enforcement;
- (d) prejudice the legitimate commercial interests of the tenderers; or
- (e) impede fair competition.

PART VII MISCELLANEOUS PROVISIONS

34. (1) This Act, any regulations made under this Act and other legal texts of general application in connection with procurement covered by this Act, shall be promptly made accessible to the public and systematically maintained as prescribed.

Publication of legal texts.

(2) The Financial Secretary shall make available to the public any judicial decisions and administrative rulings with precedent value in connection with procurement covered by this Act.

35. (1) Procuring entities shall publish information regarding planned procurement activities for forthcoming months or years in accordance with the regulations.

Information on possible forthcoming procurement.

(2) Procuring entities may also publish an advance notice of possible future procurement in accordance with the regulations.

(3) Publication under this section does not constitute a solicitation, does not oblige the procuring entity to issue a solicitation and does not confer any rights on tenderers.

36. (1) Any document, notification, decision or other information generated in the course of a procurement and communicated as required by this Act or regulations, including in connection with challenge proceedings under Part VI or in the course of a meeting, shall be in writing.

Communications in procurement.

(2) Where such document, notification, decision or other information is provided by electronic means, a record of its content shall for the purpose of the record of procurement proceedings under section 54 be converted into a medium which permits inspection and copying.

(3) Direct solicitation and communication of information between tenderers and a procuring entity may be made other than in writing, on the condition that immediately thereafter confirmation of the communication is given to the recipient of the communication in writing and provided in the record of procurement proceedings under section 54.

(4) The procuring entity, when first soliciting the participation of tenderers in the procurement proceedings, shall specify

- (a) any requirement of form;
- (b) in procurement involving classified information, if the procuring entity considers it necessary, measures and requirements needed to ensure the protection of classified information at the requisite level;
- (c) the means to be used to communicate information by or on behalf of the procuring entity to a tenderer or to any person, or by a tenderer to the procuring entity or other entity acting on its behalf;
- (d) the means to be used to satisfy all requirements under this Act for information to be in writing or for a signature; and
- (e) the means to be used to hold any meeting of tenderers.

(5) The procuring entity may use only those means of communication that are in common use by tenderers in the context of the particular procurement and in any meeting held with tenderers, the procuring entity shall use only those means that ensure in addition that tenderers can fully and contemporaneously participate in the meeting.

(6) The procuring entity shall put in place appropriate measures to secure the authenticity, integrity and confidentiality of the information concerned.

Participation by tenderers.

37. (1) Tenderers shall be permitted to participate in procurement proceedings without regard to nationality, except where the procuring entity decides to use domestic procurement.

(2) Except when authorised or required to do so by regulations or any other enactment, the procuring entity shall establish no other requirement aimed at

limiting the participation of tenderers in procurement proceedings that discriminates against or among tenderers or against categories thereof.

(3) The procuring entity, when first soliciting the participation of tenderers in the procurement proceedings, shall declare whether the participation of tenderers in the procurement proceedings is limited pursuant to this section and on which ground and any such declaration may not later be altered.

(4) A procuring entity that decides to limit the participation of tenderers in procurement proceedings pursuant to this section shall include in the record of the procurement proceedings a statement of the reasons and circumstances on which it relied.

(5) The procuring entity shall make available to any person, upon request, its reasons for limiting the participation of tenderers in the procurement proceedings pursuant to this section.

38. (1) This section applies to the ascertainment by the procuring entity of the qualifications of tenderers at any stage of the procurement proceedings. Qualifications of tenderers.

(2) Tenderers shall meet such criteria as the laws of the Virgin Islands require and the procuring entity considers appropriate and relevant in the circumstances of the particular procurement and must possess the necessary professional, technical, financial and managerial resources and competence required to complete the contract.

(3) Subject to the right of tenderers to protect their intellectual property or trade secrets, the procuring entity may require tenderers participating in procurement proceedings to provide appropriate documentary evidence or other information to satisfy itself that the tenderers are qualified in accordance with the criteria referred to in subsection (2).

(4) Any requirement established pursuant to this section shall be set out in the pre-qualification or pre-selection documents, if any, and in the solicitation documents and shall apply equally to all tenderers.

(5) A procuring entity shall impose no criterion, requirement or procedure with respect to the qualifications of tenderers other than those provided for in this Act or otherwise prescribed.

(6) The procuring entity shall evaluate the qualifications of tenderers in accordance with the qualification criteria and procedures set out in the pre-qualification documents, if any, and in the solicitation documents.

(7) Other than any criterion, requirement or procedure that may be imposed by the procuring entity in accordance with section 37, the procuring entity shall establish no criterion, requirement or procedure with respect to the

qualifications of tenderers that discriminates against or among tenderers or against categories thereof, or that is not objectively justifiable.

(8) Notwithstanding subsection (5), the procuring entity may require the legalisation of documentary evidence provided by the tenderer presenting the successful submission so as to demonstrate its qualifications for the particular procurement and shall not impose any requirements as to the legalisation of the documentary evidence other than those provided for in the laws of the Virgin Islands relating to the legalisation of documents of the type in question.

(9) The procuring entity shall disqualify a tenderer if it finds at any time that the information submitted concerning the qualifications of the tenderer was false or constituted a misrepresentation or was materially inaccurate or materially incomplete.

(10) Any tenderer participating in the procurement process shall

- (a) not be insolvent, in receivership, bankrupt or being wound up;
- (b) not have its affairs administered by a court or a judicial officer;
- (c) not have any of their directors and officers, convicted of any criminal offence related to professional misconduct or making of false statements or misrepresentations with respect to their qualifications to enter into a procurement contract, within a period of two years preceding the commencement of the procurement process, or not otherwise have been disqualified pursuant to debarment proceedings;
- (d) be in good standing with respect to taxes, duties, social security contributions, national health insurance, company registration, or payments due to the Government;
- (e) have its business activities suspended; or
- (f) be subject to any legal proceedings for any of the foregoing reasons.

Rules concerning
the procurement
requirement.

39. (1) The pre-qualification or pre-selection documents, if any, and solicitation documents shall set out a description of the subject matter of the procurement.

(2) Where practicable, the descriptions shall

- (a) be objective, functional, generic and measurable; and

- (b) set out required technical, qualitative and performance characteristics.

(3) The procuring entity shall set out in the solicitation documents

- (a) a detailed description of the subject matter of the procurement to be use in the examination of submissions;
- (b) the minimum requirements that submissions must meet in order to be considered responsive; and
- (c) the manner in which the minimum requirements are to be applied.

(4) Other than any criterion, requirement or procedure that may be imposed by the procuring entity in accordance with section 37, no description of the subject matter of a procurement that may restrict the participation of tenderers in or their access to the procurement proceedings, including any restriction based on nationality, shall be included or used in the pre-qualification or pre-selection documents, if any, or in the solicitation documents.

(5) No requirement or reference is to be made in the technical specifications to a particular make or source, or a particular process which characterises the products or services provided by a specific tenderer or to a trademark or name, patent, design or type, specific original, producer or service provider, unless there is no other practical way of describing the procurement requirements, and words such as “or equivalent” are included in the specifications.

40. (1) Except for the criteria set out in subsection (2), the evaluation criteria shall relate to the subject matter of the procurement and may include the following:

Rules concerning evaluation criteria and procedures.

- (a) price;
- (b) the cost of operating, maintaining and repairing goods or of construction;
- (c) the time for delivery of goods, completion of construction or provision of services;
- (d) the characteristics of the subject matter of the procurement, such as the functional characteristics of goods or construction and the environmental characteristics of the subject matter;

- (e) the terms of payment and of guarantees in respect of the subject matter of the procurement;
- (f) where relevant in procurement conducted in accordance with sections 25 and 26, the experience, reliability and professional and managerial competence of the tenderer and of the personnel to be involved in providing the subject matter of the procurement.

(2) In addition to the criteria set out in subsection (1), the evaluation criteria may include

- (a) any other prescribed criteria;
- (b) a criteria authorised or required to be taken into account by virtue of any enactment; or
- (b) a margin of preference for the benefit of goods produced in BVI or labour provided by BVI nationals, or any other preference, that is prescribed by regulations or any other enactment and the margin of preference shall be calculated as prescribed.

(3) To the extent practicable, all non-price evaluation criteria shall be objective, quantifiable and expressed in monetary terms.

(4) The procuring entity shall set out in the solicitation documents

- (a) whether the successful submission will be ascertained on the basis of price, or price and other criteria;
- (b) all evaluation criteria established pursuant to this section, including price as modified by any preference;
- (c) the relative weights of all evaluation criteria;
- (d) the manner of application of the criteria in the evaluation procedure.

(5) In evaluating submissions and determining the successful submission, the procuring entity shall use only those criteria and procedures that have been set out in the solicitation documents and shall apply those criteria and procedures in the manner that has been disclosed in those solicitation documents and no criterion or procedure shall be used that has not been set out in accordance with this section.

41. (1) A procuring entity shall neither divide its procurement nor use a particular valuation method for estimating the value of procurement so as to limit competition among tenderers or otherwise avoid its obligations under this Act.

Rules concerning estimation of the value of procurement.

(2) In estimating the value of procurement, the procuring entity shall include the estimated maximum total value of the procurement contract or of all procurement contracts envisaged under a framework agreement over its entire duration, taking into account all forms of remuneration.

42. (1) Pre-qualification or pre-selection documents, if any, and solicitation documents shall be formulated in English.

Rules concerning the language of documents.

(2) Applications to pre-qualify or for pre-selection, if any, and submissions may be formulated and presented in the language of the pre-qualification or pre-selection documents, if any, and solicitation documents, respectively, or in any other language permitted by those documents.

43. (1) The manner, place and deadline for presenting applications to pre-qualify or for pre-selection shall be set out in the invitation to pre-qualify or for pre-selection and in the pre-qualification or pre-selection documents, as applicable and the manner, place and deadline for presenting submissions shall be set out in the solicitation documents.

Rules concerning applications.

(2) Deadlines for presenting applications to pre-qualify or for pre-selection or for presenting submissions shall be expressed as a specific date and time and shall allow sufficient time for tenderers to prepare and present their applications or submissions, taking into account the reasonable needs of the procuring entity.

(3) If the procuring entity issues a clarification or modification of the pre-qualification, pre-selection or solicitation documents, it shall, prior to the applicable deadline for presenting applications to pre-qualify or for pre-selection or for presenting submissions, extend the deadline if necessary or as required under section 44(4) to afford tenderers sufficient time to take the clarification or modification into account in their applications or submissions.

(4) The procuring entity may, at its absolute discretion, prior to a deadline for presenting applications to pre-qualify or for pre-selection or for presenting submissions, extend the applicable deadline if it is not possible for one or more tenderers to present their applications or submissions by the deadline initially stipulated because of any circumstance beyond their control.

(5) Notice of any extension of the deadline shall be given promptly to each tenderer to which the procuring entity provided the pre-qualification, pre-selection or solicitation documents.

Clarifications
and
modifications of
solicitation
documents.

44. (1) A tenderer may in writing request a clarification of the solicitation documents from the procuring entity and the procuring entity shall respond to any request by a tenderer for clarification of the solicitation documents that is received by the procuring entity within a reasonable time prior to the deadline for presenting submissions.

(2) The procuring entity shall respond in writing within a time period that will enable the tenderer to present its submission in a timely manner and shall, without identifying the source of the request, communicate the clarification to all tenderers to which the procuring entity has provided the solicitation documents.

(3) At any time prior to the deadline for presenting submissions, the procuring entity may for any reason, whether on its own initiative or as a result of a request for clarification by a tenderer, modify the solicitation documents by issuing an addendum and the addendum shall be communicated promptly to all tenderers to which the procuring entity has provided the solicitation documents and shall be binding on those tenderers.

(4) If as a result of a clarification or modification issued in accordance with this section, the information published when first soliciting the participation of tenderers in the procurement proceedings becomes materially inaccurate, the procuring entity shall cause the amended information to be published in the same manner and place in which the original information was published and shall extend the deadline for presentation of submissions as provided for in section 43(3).

(5) If the procuring entity convenes a meeting of tenderers, it shall prepare minutes of the meeting containing the requests submitted at the meeting for clarification of the solicitation documents and its responses to those requests, without identifying the sources of the requests and the minutes shall be provided promptly to all tenderers to which the procuring entity provided the solicitation documents, so as to enable those tenderers to take the minutes into account in preparing their submissions.

Clarification of
qualification
information and
of submissions.

45. (1) During evaluation, the procuring entity may ask a tenderer for clarification of its qualification information or of its submission, in order to assist in the ascertainment of qualifications or the examination and evaluation of submissions.

(2) The procuring entity shall correct purely arithmetical errors that are discovered during the examination of submissions and the procuring entity shall give prompt notice of any such correction to the tenderer that presented the submission concerned. The submission of any tenderer that does not accept an accurate correction shall be rejected.

(3) No substantive change to qualification information or to a submission, including changes aimed at making an unqualified tenderer qualified or an unresponsive submission responsive, shall be sought, offered or permitted.

(4) No negotiations shall take place between the procuring entity and a tenderer with respect to qualification information or submissions, nor shall any change in price be made pursuant to a clarification that is sought under this section.

(5) Subsection (4) shall not apply to proposals submitted under sections 25 and 26.

(6) All communications generated under this section shall be included in the record of the procurement proceedings.

46. (1) When the procuring entity requires tenderers presenting submissions to provide a tender security the requirement shall apply to all tenderers.

Tender securities.

(2) A contractor or supplier which has been awarded a contract and refuses to sign and execute a contract for which a performance security is required will forfeit its tender security.

(3) The procuring entity shall make no claim to the amount of the tender security and shall promptly return, or procure the return of, the tender security after the earliest of the following events:

- (a) the expiry of the tender security;
- (b) the entry into force of a procurement contract and the provision of a security for the performance of the contract, if such a security is required by the solicitation documents;
- (c) the cancellation of the procurement;
- (d) the withdrawal of a tender submission prior to the deadline for presenting submissions.

47. (1) For domestic procurement, the procuring entity may select qualified contractors from the Contractors Registration and Classification System to submit tenders for undertaking certain categories of work without using the pre-qualification procedures specified in subsections (2), (3), (4), (5), (6), (7), (8), (9), (10) and (11) and the selection of contractors from the Contractors Registration and Classification System is determined by the type, cost and complexity of the work to be undertaken and the prescribed procedures for its use.

Contractors' Registration and Pre-qualification proceedings.

(2) The procuring entity may engage in pre-qualification proceedings with a view to identifying, prior to solicitation, tenderers that are qualified and section 38 shall apply to pre-qualification proceedings.

(3) If the procuring entity engages in pre-qualification proceedings, it shall cause an invitation to pre-qualify to be published in the prescribed publication

and unless decided otherwise by the procuring entity in the circumstances referred to in section 10(4), the invitation to pre-qualify shall also be published internationally, so as to be widely accessible to international tenderers.

(4) The invitation to pre-qualify shall include the following information:

- (a) the name and address of the procuring entity;
- (b) a summary of the main terms and conditions of the procurement contract or the framework agreement to be entered into in the procurement proceedings, including
 - (i) the nature, quantity and place of delivery of the goods to be supplied;
 - (ii) the nature and location of the construction to be effected or the nature of the services and the location where they are to be provided;
 - (iii) the desired or required time for the supply of the goods; and
 - (iv) the completion of the construction or the provision of the services; and
- (c) such other information as may be prescribed.

(5) The procuring entity shall provide a set of pre-qualification documents to each tenderer that requests them in accordance with the invitation to pre-qualify and that pays the price, if any, charged for those documents and the price that the procuring entity may charge for the pre-qualification documents shall reflect only the cost of providing them to tenderers.

(6) The pre-qualification documents shall include such information as may be prescribed.

(7) The procuring entity shall respond to any request by a tenderer for clarification of the pre-qualification documents that is received by the procuring entity within a reasonable time prior to the deadline for presenting applications to pre-qualify and the procuring entity shall respond within a time period that will enable the tenderer to present its application to pre-qualify in a timely manner and the response to any request that might reasonably be expected to be of interest to other tenderers shall, without identifying the source of the request, be communicated to all tenderers to which the procuring entity has provided the pre-qualification documents.

(8) The procuring entity shall take a decision with respect to the qualifications of each tenderer presenting an application to pre-qualify. In reaching that decision, the procuring entity shall apply only the criteria and procedures set out in the invitation to pre-qualify and in the pre-qualification documents.

(9) Only tenderers that have been pre-qualified are entitled to participate further in the procurement proceedings.

(10) The procuring entity shall promptly notify each tenderer presenting an application to pre-qualify whether or not it has been pre-qualified. It shall also make available to any person, upon request, the names of all tenderers that have been pre-qualified.

(11) The procuring entity shall upon request promptly communicate to each tenderer that has not been pre-qualified the reasons therefor.

(12) For the purposes of subsection (1), the Financial Secretary on the recommendation of the Central Tenders Board shall maintain a list to be approved by the Minister, of pre-qualified contractors for the procurement of services, including construction works.

48. (1) The procuring entity may cancel the procurement at any time prior to the acceptance of the successful submission and, after the successful submission is accepted, under the circumstances referred to in section 51(6) and the procuring entity shall not open any tenders or proposals after taking a decision to cancel the procurement.

Cancellation of the procurement.

(2) The decision of the procuring entity to cancel the procurement and the reasons for the decision shall be included in the record of the procurement proceedings and promptly communicated to any tenderer that presented a submission.

(3) The procuring entity shall promptly publish a notice of the cancellation of the procurement in the same manner and place in which the original information regarding the procurement proceedings was published, and return any tenders or proposals that remain unopened at the time of the decision to the tenderers that presented them.

(4) The procuring entity shall incur no liability, solely by virtue of its invoking subsection (1), towards tenderers that have presented submissions.

49. (1) The procuring entity may reject a submission if the procuring entity has determined that the price, in combination with other constituent elements of the submission, is abnormally low in relation to the subject matter of the procurement and raises concerns with the procuring entity as to the ability of the tenderer that presented that submission to perform the procurement contract, provided that the procuring entity has taken the following actions:

Rejection of abnormally low submissions.

- (a) requested in writing from the tenderer details of the submission that give rise to concerns as to the ability of the tenderer to perform the procurement contract; and
- (b) taken account of any information provided by the tenderer following this request and the information included in the submission, but continues, on the basis of all such information, to hold concerns.

(2) The decision of the procuring entity to reject a submission in accordance with this section, the reasons for that decision, and all communications with the tenderer under this section shall be included in the record of the procurement proceedings and the decision of the procuring entity and the reasons therefor shall be promptly communicated to the tenderer concerned.

Exclusion of a tenderer from the procurement proceedings.

50. (1) A procuring entity shall exclude a tenderer from the procurement proceedings if it determines that

- (a) during the procurement procedure the tenderer has engaged in corrupt or fraudulent behaviour contrary to any enactment;
- (b) the tenderer has an unfair competitive advantage or a conflict of interest.

(2) Any decision of the procuring entity to exclude a tenderer from the procurement proceedings under this section and the reasons therefor shall be included in the record of the procurement proceedings and promptly communicated to the tenderer concerned.

Acceptance of the successful submission and entry into force of the procurement contract.

51. (1) The procuring entity shall accept the successful submission unless

- (a) the tenderer presenting the successful submission is disqualified in accordance with section 38;
- (b) the procurement is cancelled in accordance with section 48(1);
- (c) the submission found successful at the end of evaluation is rejected as abnormally low under section 49; or
- (d) the tenderer presenting the successful submission is excluded from the procurement proceedings on the grounds specified in section 50.

(2) The procuring entity shall promptly notify each tenderer that presented submissions of its decision to accept the successful submission and the notice shall contain, at a minimum, the following information:

- (a) the name and address of the tenderer presenting the successful submission;
- (c) the accepted contract amount or, where the successful submission was ascertained on the basis of price and other criteria, the accepted contract amount and a summary of other characteristics and relative advantages of the successful submission;
- (d) the right to bring challenge procedures under Part IV within ten working days of the notice; and
- (e) any other prescribed information.

(3) Subsection (2) shall not apply to the award of a procurement contract where the accepted contract amount is less than the prescribed threshold or in the event of urgency.

(4) Promptly after the successful submission was ascertained, the procuring entity shall dispatch the letter of acceptance of the successful submission to the tenderer that presented that submission, unless the Procurement Appeals Board or the High Court orders otherwise.

(5) No contract may be signed or concluded before ten working days from receipt of the letter of acceptance.

(6) Where the solicitation documents require the tenderer whose submission has been accepted to sign a written procurement contract conforming to the terms and conditions of the solicitation document, the competent signatory acting on behalf of the procuring entity and the tenderer concerned shall sign the procurement contract within a reasonable period of time after the letter of acceptance is dispatched to the tenderer concerned.

(7) If the tenderer whose submission has been accepted fails to sign any written procurement contract as required or fails to provide any required security for the performance of the contract, the procuring entity may either cancel the procurement or decide to select the next successful submission from among those remaining, in accordance with the criteria and procedures set out in this Act and in the solicitation documents and, in the latter case, this section shall apply *mutatis mutandis* to such submission.

(8) Written notices and letters under this section are dispatched when they are promptly and properly addressed or otherwise directed and transmitted to

the tenderer or conveyed to an appropriate authority for transmission to the tenderer by any reliable means specified in accordance with this Act.

(9) Upon the entry into force of the procurement contract, notice of the procurement contract shall be given promptly to other tenderers, specifying the name and address of the tenderer that has entered into the contract and the accepted contract amount.

Public notice of the award of a procurement contract or framework agreement.

52. (1) Upon the entry into force of the procurement contract or conclusion of a framework agreement, the procuring entity shall promptly publish notice of the award of the procurement contract or the framework agreement, specifying the name of the tenderer to which the procurement contract or the framework agreement was awarded and, in the case of procurement contracts, the accepted contract amount.

(2) Subsection (1) shall not apply to awards where the contract price is less than the prescribed threshold amount and the procuring entity shall publish a cumulative notice of such awards from time to time but at least once per year.

(3) The Cabinet shall prescribe the manner of publication of the notices required under this section.

Confidentiality.

53. (1) In its communications with tenderers or with any person, the procuring entity shall not disclose any information if non-disclosure of such information is necessary for the protection of the national security of the Virgin Islands or if disclosure of such information would be contrary to law, would impede law enforcement, would prejudice the legitimate commercial interests of the tenderers or would impede fair competition, unless disclosure of that information is ordered by the High Court and, in such case, subject to the conditions of such an order.

(2) Other than when providing or publishing information pursuant to section 51(2) and (8) and to sections 52, 54 and 19, the procuring entity shall treat applications to pre-qualify or for pre-selection and submissions in such a manner as to avoid the disclosure of their contents to competing tenderers or to any other person not authorised to have access to this type of information.

(3) Any discussions, communications, negotiations or dialogue between the procuring entity and a tenderer pursuant to section 26 shall be confidential and unless required by law or ordered by the High Court, no party to any such discussions, communications, negotiations or dialogue shall disclose to any other person any technical, price or other information relating to these discussions, communications, negotiations or dialogue without the consent of the other party.

(4) Subject to the requirements in subsection (1), in procurement involving classified information, the procuring entity may

- (a) impose on tenderers requirements aimed at protecting classified information; and
- (b) demand that tenderers ensure that their sub-contractors comply with requirements aimed at protecting classified information.

54. (1) The procuring entity shall maintain a record of the procurement proceedings that includes such information as may be prescribed.

Documentary record of procurement proceedings.

(2) Portions of the record referred to in subsection (1) shall, on request, be made available to any person after the successful submission has been accepted or the procurement has been cancelled.

(3) Subject to subsection (4), or except as disclosed pursuant to section 19, portions of the record referred to in subsection (1) shall, after the decision on acceptance of the successful submission has become known to them, be made available, upon request, to tenderers that presented submissions.

(4) Except when ordered to do so by the High Court, and subject to the conditions of such an order, the procuring entity shall not disclose

- (a) information from the record of the procurement proceedings if its non-disclosure is necessary for the protection of the national security of the Virgin Islands or if its disclosure would be contrary to law, would impede law enforcement, would prejudice the legitimate commercial interests of the tenderers or would impede fair competition;
- (b) information relating to the examination and evaluation of submissions, other than in summary and as may be prescribed.

55. (1) All public officers or other persons employed by a procuring entity, members of the Procurement Unit and Central Tenders Board and any other person with the ability to influence any public procurement, including in the

Integrity and code of conduct.

- (a) planning or conduct of public procurement proceedings or contract management;
- (b) making of a decision, approval, determination or recommendation; or
- (c) the preparation of any solicitation document

are subject to the provisions of subsection (2) and to any disciplinary or legal sanctions that may ensue under any enactment.

(2) In exercising their duties, the persons identified in subsection (1) shall

- (a) act diligently, impartially, conscientiously and fairly in accordance with the procedures set out this Act;
- (a) at all times act in the public interest;
- (b) avoid conflicts of interest, whether actual, perceived or potential;
- (c) not commit or abet any corrupt or fraudulent practice, including the solicitation or acceptance of improper inducements; and
- (d) subject to this Act, not disclose any information relating to procurement proceedings and to tenders.

(3) The Financial Secretary shall issue a code of conduct for officers and employees of procuring entities which shall include at least the following:

- (a) measures for the prevention of conflicts of interest in procurement;
- (b) certificates declaring an absence of conflicts of interest to be signed by officers exercising specified roles in the procurement function;
- (c) where appropriate, measures to regulate matters regarding personnel responsible for procurement, such as declarations of interest in
 - (i) particular procurements;
 - (ii) screening procedures; and
 - (iii) training requirements.

(4) The Financial Secretary shall cause the code of conduct and all amendments to the Code to be published and otherwise be made accessible to the public.

Regulations.

56. (1) The Cabinet may make regulations not inconsistent with this Act, for giving effect to the provisions of this Act.

- may
- (2) Without limiting the generality of subsection (1), the regulations
- (a) provide for the issuing of directives which govern the public procurement process;
 - (b) provide for recording, filing and preserving all documents relating to the procurement proceedings;
 - (c) provide for the manner of procuring goods and services during a public emergency for the purposes of section 8(3)(e); and
 - (d) prescribing anything that is required to be prescribed by this Act.

Repeals and savings.

57. (1) Section 44(1)(b) of the Public Finance Management Act is repealed.

(2) Notwithstanding subsection (1), any Regulations made under the repealed subsection to govern the Central Tenders Board and the procurement process shall, until revoked, continue to be in force to the extent that the Regulations are not inconsistent with this Act.

No. 2 of 2004.

Transitional provisions.

58. (1) A tender contract existing at the date of commencement of this Act continues to be administered in terms of and governed by the existing law governing such tender, as if this Act has never been enacted.

(2) An invitation to tender that has been advertised before the date of commencement of this Act, whether the tender advertisement has been closed or not, the tendering shall be dealt with in terms of this Act.

(3) If, at the date of commencement of this Act, a matter relating to public procurement is pending before any court or the Central Tenders Board pursuant to the existing law governing such matter, that matter shall continue to be dealt with and brought to a conclusion as if this Act had not been enacted.

SCHEDULE

[Schedule 5(7)]

OPERATION AND PROCEDURES OF THE CENTRAL TENDERS BOARD

Quorum.

1. Any three members present at a meeting of the Board shall constitute a quorum of the Board.

Decisions of the Board.

2. (1) Decisions of the Board shall be by a majority of the members or delegates present and voting, and in the event of an equality of votes, the chairperson has a second or casting vote.

(2) A decision of the majority of the members or designates present and able to vote is a decision of the Board.

Frequency, place, day and time of Board meetings.

3. (1) The Board shall meet as often as may be necessary to perform its duties and exercise its powers in an expeditious manner.

(2) A meeting of the Board shall be held on the days and at the times that the chairperson may determine.

Notice of Board meeting.

4. (1) The chairperson shall cause written notice of the place, day, time and agenda of the meeting of the Board to be given to each member, and to each designate, known to the chairperson to be attending the meeting, not less than seventy-two hours before the time scheduled for the holding of the meeting, unless the member or designate waives notice of the meeting in writing.

(2) Notice shall be given to a member or designate by

- (a) handing a copy of the notice to the member or designate;
- (b) leaving a copy of the notice at the office of the member or designate;
- (c) e-mailing a copy of the notice to the member or designate at the e-mail address of the member or, as the case may be, the designate; or
- (d) any other means approved by resolution of the Board.

Waiver of notice.

5. A member or designate may in writing waive notice of a meeting.

Decision of chairperson.

6. The decision of the person presiding at a meeting of the Board is final on the following matters

- (a) the agenda for a meeting;
- (b) the conduct of the meeting.

Passed by the House of Assembly this 3rd day of November, 2021.

(Sgd.) Julian Willock,
Speaker.

(Sgd.) Phyllis Evans,
Clerk of the House of Assembly.



GOVERNMENT OF THE VIRGIN ISLANDS

Ministerial Code of Conduct

MINISTERIAL CODE

Foreword by

The Premier

2021

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INTRODUCTION

Application of the Code

The Code provides a guide for Ministers on how they should act and arrange their affairs to uphold these standards.

Ministers are personally accountable and responsible for how they conduct themselves in the light of the Code and justify their actions and conduct to the Cabinet, the House of Assembly, and the public.

The Premier is responsible for holding Ministers to account for the effective execution of the Code. The Premier has discretion in respect of the initial handling of possible breaches of the Code. Where a breach of the standards has been alleged, the Premier decides whether or not a minister should resign.

Ministers only remain in office for so long as they retain the confidence of the Premier. She/he is the judge of the standards of behaviour expected of a Minister and the appropriate consequences of a breach of those standards.

Ministers must also comply with the requirements concerning the accountability and responsibility of Ministers.

The Cabinet Secretary is responsible to the Premier for the record-keeping and administration associated with this Code.

All Ministers, including the Premier, is to respect their responsibilities under this Code.

1. MINISTERS OF GOVERNMENT

1. General Principle

Ministers of Government are expected to maintain high ethical standards and behave in a way that upholds the highest propriety standards.

1.2 Introduction

Ministers should be professional in all their dealings and treat all those they encounter with consideration and respect. Working relationships with other Ministers, public officers, and House of Assembly members and staff should be proper and appropriate. Harassing, bullying, or other inappropriate or discriminating behaviour wherever it takes place is not consistent with the Ministerial Code.

1.3 Principles of the Code

The *Ministerial Code* should be read against the background of the overarching duty on Ministers to comply with the law, uphold the administration of justice, and protect the integrity of public life. They are expected to observe the following principles of Ministerial conduct:

- a. The principle of collective responsibility applies to all Government Ministers;
- b. Every Minister is expected to support the Government's policy;
- c. As the political head of a Ministry, the Minister is responsible for all of its acts and omissions;
- d. Ministers have a responsibility to the House of Assembly to account for the policies, decisions and actions of their Ministries, departments and agencies;

- e. Ministers should give accurate information to Cabinet and the House of Assembly, and correct any inaccuracy at the earliest opportunity;
- f. Ministers must ensure that no conflict arises, or appears to arise, between their public duties and their private interests;
- g. Ministers should not accept any gift or hospitality which might, or might reasonably appear to, compromise their judgement or place them under an improper obligation;
- h. Ministers must not use government resources for party political purposes;
- i. Ministers must uphold the political impartiality of the Public Service and not ask public officers to act in any way which would bring them into conflict with their public service conditions of employment or any legislation, codes or policies governing the Public Service;
- j. Ministers are not justified under any circumstances in using official information which comes to him in his capacity as a Minister for his own private profit, or for that of family, friends or associates;
- k. Ministers should not place themselves in a position which will tempt themselves to use their official influence to support any project or to advance any contract in which they (or their family, friends and associates) have a personal interest;
- l. Ministers should not accept any kind of favour from individuals who are in negotiation with, or seeking to enter into contractual, proprietary or pecuniary relations with the Government; and,
- m. Ministers should scrupulously avoid investments, where by virtue of their official positions as Ministers, and their ability to have early or confidential access to information, they have, or may appear to have, an advantage over other people in anticipating market changes.

1.4 Breach of the Code

1. Any complaint against a Minister that there has been a breach of the Code must be made in writing.
2. The Premier may decline to entertain a complaint which appears:
 - i. not to refer to a breach of the Code;
 - ii. to be minor, frivolous or vexatious;
 - iii. save in exceptional circumstances, to relate to a matter that occurred more than 12 months prior to the date of the complaint; and
 - iv. to relate to an action by the Minister of an administrative nature, or in discharge of that Minister's ministerial responsibilities, in respect of which an appropriate avenue of appeal under the law governing such activities otherwise lies, but, in all other cases he shall cause the complaint to be investigated.
2. The Premier may of his or her own volition initiate an investigation into a potential breach of the Code where he or she suspects that a breach may have been committed.
3. The Premier shall notify any Minister who is the subject of a complaint or investigation that a complaint has been made and/or investigation initiated into a potential breach of the Code. Such notification shall include an outline of the complaint made or an explanation for the decision by the Premier to initiate an investigation.
4. The investigation shall be limited to the matters notified to the Minister, and no new matters will be added other than to the extent that the investigation identifies the existence of such matters, in which event the Premier will notify the Minister concerned of the additional matters.

5. The Minister shall be afforded a period of 10 working days to respond to the initial notification and to any subsequent notification. The Premier may extend this period as shall be fair in all the circumstances. In responding, the Minister shall be afforded the opportunity to be heard in person by the Premier.
6. In order to determine a complaint, the Premier may, in any manner he deems appropriate, commission an investigation to gather facts or make findings of fact. Those carrying out the investigation should seek to ascertain the facts and report its findings of fact to the Premier.
7. The conclusions of any investigation and any report underpinning those conclusions should be shown to the Minister who is the subject of the complaint, and the Minister should be afforded a further opportunity to respond within three working days. At this point, a Minister should also have the opportunity to be heard by the Premier.
8. A decision as to whether or not a breach of the Code has taken place is for the Premier who shall also determine the appropriate sanction in the event that a breach of the Code has been found. Any decision, together with any sanction, should be notified to the Minister in writing in advance of any public announcement.
9. The Premier shall determine all matters of procedure, including the extent to which other Ministers and the Cabinet should be involved in the disciplinary process. The Premier's decision on the outcome of the matter shall be final.

2. MINISTERS AND CABINET

2.1 General Principle

The principle of collective responsibility requires that Ministers should be able to express their views frankly in the expectation that they can argue freely in private while maintaining a united front when decisions have been reached. This in turn requires that the privacy of opinions expressed in Cabinet, including in correspondence, should be maintained.

2.2 Collective Responsibility

The internal process through which a decision has been made, or the level of Committee by which it was taken, should not be disclosed. Decisions reached by the Cabinet are binding on all members of the Cabinet. They are, however, normally announced and explained publicly by the Minister as the decision of the Cabinet concerned.

2.3 Guidance

Ministers should be guided by the Virgin Islands Constitution Order, 2007, Cabinet Handbook and Standing Orders.

2.4 Junior Ministers

Junior Ministers are not members of Cabinet and should be careful to avoid being spoken of as such. The provisions of this code apply to Junior Ministers, where appropriate.

3. MINISTERS AND THE HOUSE OF ASSEMBLY

3.1 General Principle

Ministers should respect the House of Assembly's role in providing scrutiny of, and holding to account the Government of the day.

3.2 Prioritising Assembly Business

Ministers should place the highest priority possible on participating in the business of the House of Assembly. It is nonetheless recognised that holding a ministerial portfolio is demanding, and that Ministers will need to be absent on occasion due to their ministerial responsibilities.

3.3 Timing and Form of Announcement

Even when Government announcements are not of major importance, their timing may require careful consideration in order to avoid clashes with other Government publications, statements or announcements or with planned Parliamentary business.

Ministers may, wherever possible, give their Cabinet colleagues the opportunity to comment on the content and timing of all important Government announcements. Any policy statement should be approved by the Premier and majority of Ministers.

3.4 Statements and Answers to Questions

Careful consideration should be given, in the case of important or extremely sensitive issues, to the desirability of making qualifying ministerial statements in response to issues raised in questions for a House of Assembly sitting.

In the case of answers to House of Assembly questions, particular care must be taken to avoid making a press announcement before the relevant answer has been delivered to the Member of the House of Assembly who tabled the question.

Ministers should adhere to the provisions in the Standing Orders as it relates to making statements in the House of Assembly.

3.5 Committee Reports

Any Minister or Junior Minister who receives a copy of a Committee report in advance of publication should ensure that its content remain confidential and not be distributed, printed/copied, and should return it without delay to the Clerk of the appropriate Committee.

3.6 Accounting to the House of Assembly

Ministers have a duty to the House of Assembly to account for matters for which they are responsible, including for the policies, decisions and actions of the department and agencies under his or her portfolio.

4. PUBLIC APPOINTMENTS

4.1 Public Appointments

When a Minister assumes office, he or she should relinquish any other public appointments, which they may hold, pursuant to any relevant laws, regulations or codes.

5. MINISTERS AND THEIR MINISTRIES/DEPARTMENTS

5.1 General Principle

Ministers are assigned responsibility for the conduct of any business of the Government of the Virgin Islands, including responsibility for the administration of any department of government in accordance with Section 56 of the Virgin Islands Constitution Order, 2007.

5.2 Ministerial and Departmental Responsibility

As a Minister assigned with overall responsibility for the administration of any ministry and department of Government, in Line with the Public Services Management Act, he or she will be expected to:

- a. promote the overall effectiveness and efficiency of the ministry or department;
- b. direct a Permanent Secretary or Head of Department about steps that should be taken to improve the effectiveness and efficiency of the ministry or department;
- c. authorise reviews of activities or functions of the ministry or department; and,
- d. monitor the performance of the Permanent Secretary in the ministry.

This does not limit or otherwise affect other functions of a Minister or require a Minister to carry out any particular action.

5.3 Ministers outside the Cabinet

The Minister in charge of a ministry and department in line with section 56 of the Virgin Islands Constitution Order, 2007 is also accountable to the House of Assembly for the exercise of the powers on which the administration of that ministry and department depends.

Ministers have a duty to the House of Assembly to account for matters for which they are responsible, including policies, decisions and actions of the ministries, departments and agencies which discharge their responsibilities.

5.4 Arrangements during absence from the Virgin Islands

Absences from the Territory, of the Premier, Deputy Premier or any Minister, should be managed in accordance with Sections 54 and 55 of the Virgin Islands Constitution Order 2007.

6. MINISTERS AND PUBLIC OFFICERS

6.1 General Principle

Ministers must uphold the political impartiality of the Public Service, and not ask public officers to act in any way which would conflict with their responsibility and obligations. Ministers should be professional in their working relationships with the Public Service and treat all those with whom they come into contact with consideration and respect.

6.2 The Attorney General

The Attorney General is the principal legal adviser to the Government. Therefore, Ministers must consult with the Attorney General regarding any proposal to retain any private counsel for Government related work.

The Attorney General's Chambers must be consulted in good time before the Government is committed to critical decisions involving legal considerations.

By convention, written opinions of the Attorney General, unlike other Ministerial papers, are generally made available to succeeding administrations.

When advice from the Attorney General is included in correspondence between Ministers, or in Cabinet Papers, the conclusions may, if necessary, be summarised but, if this is done, the complete text of the advice should be attached.

The fact and content of opinions or advice given by the Attorney General on a matter that is before the court must not be disclosed outside Government without the authorisation of the Attorney General.

7. MINISTERS' CONSTITUENCY AND PARTY INTERESTS

7.1 General Principle

Ministers are provided with facilities to enable them to carry out their official duties. These facilities should not generally be used for party political activities.

7.2 Use of Government Property/Resources

Government property should not generally be used for party political activities. A particular exception is recognised in the case of official residences. Where Ministers host Party or personal events in these residences it should be at their own or Party expense.

8. MINISTERS' PRIVATE INTERESTS

8.1 General Principle

Ministers must ensure that no conflict arises, or could reasonably be perceived to arise, between their public duties and their private interests, financial or otherwise.

8.2 Responsibility for Avoiding Conflict

It is the responsibility of each Minister to decide whether and what action is needed to avoid a conflict or the perception of a conflict.

8.3 Financial Interests

Ministers must scrupulously avoid any danger of an actual or perceived conflict of interest between their Ministerial position and their private financial interests. They should be guided by the general principle that they should either dispose of the interest giving rise to the conflict or take alternative steps to prevent the conflict.

8.4 Steps to be taken where financial interests are retained

Where exceptionally it is decided that a Minister can retain an interest, the Minister and the department must put processes in place to prohibit access to certain papers and ensure that the Minister is not involved in certain decisions and discussions relating to that interest.

In some cases, it may not be possible to devise a mechanism to avoid a conflict of interest. In any such case, the Premier must be consulted and it may be necessary for the Minister to cease to hold the subject in question.

8.5 Non-Public Bodies

Ministers should take care to ensure that they do not become associated with non-public organisations whose objectives may in any degree conflict with Government policy and thus give rise to a conflict of interest.

Ministers should not therefore normally accept invitations to act as patrons of, or otherwise offer support to, pressure groups, or organisations dependent in whole or in part on Government funding. There is normally less objection to a Minister associating him or herself with a charity, subject to the points above, but Ministers should take care to ensure that in participating in any fund-raising activity, they do not place, or appear to place, themselves under an obligation as Ministers to those to whom appeals are directed and for this reason they should not approach individuals or companies personally for this purpose.

8.6 Legal Proceedings

Where Ministers become involved in legal proceedings in a personal capacity, there may be implications for them in their official position. Defamation is an example of an area where proceedings will invariably raise issues for the Minister's official as well as his or her private position. In all such cases, Ministers should notify Premier and the Attorney General in good time and before legal proceedings are initiated.

Similarly, when a Minister is a defendant or a witness in an action, he or she should notify the Premier and Attorney General as soon as possible.

8.7 Nominations for Prizes and Awards

From time to time, the personal support of Ministers is requested for nominations being made for international prizes and awards. Ministers should not sponsor individual nominations for any awards, since it would be inevitable that some people would assume that the Government was itself thereby giving its sponsorship.

8.8 Foreign Decorations

Ministers should not normally, while holding office, accept decorations from foreign countries. Where such an award is offered, Ministers should consult the Premier's Office on the merits of accepting.

8.9 Acceptance of Personal Gifts and Hospitality

It is a well-established and recognised rule that no Minister should accept gifts, hospitality or services from anyone which would, or might appear to, place him or her under an obligation. The same principle applies if gifts etc. are offered to a member of their family.

The rules which apply to the acceptance of gifts from donors with whom the Minister has official dealings locally also apply to gifts from overseas donors. These rules are as follows:

- a) Gifts of lesser value (currently, a value of up to \$500 will apply) may be retained by the recipient and gifts of a higher value should be declared to the Registrar of Interests.

Gifts received while overseas and valued in excess of the normal travellers' duty exemption allowances should be declared at importation to Customs, who will advise on any duty or tax liability. In general, if a Minister wishes to retain a gift, he or she will be liable for any tax or duty it may incur.

9. MINISTERS AND EXTERNAL RELATIONS

9.1 General Principle

Ministers should exercise particular care in the handling of matters which concern the Virgin Islands' relationship with other jurisdictions and should be aware of the provisions of section 60 of the Constitution which set out the Governor's responsibilities in respect of the conduct of foreign affairs.

9.2 Relations with other Governments

Ministers should be mindful of the importance of sending to the Premier written details of the salient points of any discussions which they may have with representatives of foreign or Commonwealth countries. This requirement applies to informal discussions, as well as those held in the course of carrying out official business.

Ministers should not normally, while holding office, accept decorations from foreign countries.

9.3 Visits by Commonwealth and Foreign Visitors

Ministers should inform the Premier, when extending invitations to Ministers of other Governments to pay official visits to the Virgin Islands.

10. MINISTERS AND TRAVEL

10.1 General Principle

Ministers must ensure that they always make efficient and cost-effective travel arrangements. Official transport should not normally be used for party or private purposes, except where this is justified on security grounds.

10.2 Ministers' Visits within the Virgin Islands

A Minister, when preparing to make an official visit within the Virgin Islands should inform the members of the House of Assembly for the constituencies included in his itinerary.

A Minister who wishes to be absent from the Territory for any reason should seek the Premier's approval.

11. MINISTERS AND ELECTIONS

11.1 General Principle

After the dissolution of the House of Assembly, Government should be careful not to initiate any new policy which could be deemed to commit an incoming administration.

12. MINISTERS AND COMPLIANCE

12.1 General Principle

Ministers have a personal responsibility to conduct themselves in accordance with the Code. The Premier has discretion in respect of the initial handling of possible breaches of the Code.

12.2 Advice on Compliance

If there is doubt on the part of a Minister or Junior Minister about the application of this Code, or difficulty in applying the Code, then they should approach the Premier.

12.3 Code Compliance Procedures

The Premier determines compliance with the Code and any associated actions.

13. COMPLIANCE OF PREMIER

13.1 General Principle

Premier has a personal responsibility to conduct him or herself in accordance with the Code.

13.2 Advice of Compliance

Where an allegation involving improper conduct of a significant kind, involving breach of these standards, is made against the Premier, the allegation must be referred to the House of Assembly where the Speaker with the approval of the House will cause the matter to be investigated by an independent committee or by a three-member committee consisting of members from both sides of the House.

The written report from the committee should be submitted to the Speaker within 21 days after the committee received the investigation terms of reference in writing.

The Speaker will cause the report to be laid in the House of Assembly 14 days after receiving the above report.

GOVERNMENT OF THE VIRGIN ISLANDS

PUBLIC SERVICE MANAGEMENT ORDERS OF THE VIRGIN ISLANDS^[HI] 2021

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**PUBLIC SERVICE MANAGEMENT ORDERS OF THE VIRGIN
ISLANDS^[H2] 2021**

**PART I
INTRODUCTION**

1. (1) The conditions of service of public officers, instructions for the conduct of public business and of officers and other matters are embodied in these Orders which are entitled Public Service Management Orders of the Virgin Islands 2021 and are published under the authority of the Governor. Title and commencement.

(2) These Orders shall take effect from [date] and they supersede the General Orders of the Virgin Islands made in 1971 and revised in 1982.

2. The main purposes of these Order are to Purpose.

- (a) ensure a high performing apolitical service that is
 - (i) responsive to Government priorities; and
 - (ii) focused on the delivery of services in a professional and non-partisan way;
- (b) promote the effectiveness and efficiency of Government ministries and departments;
- (c) provide for the terms and conditions of the service of persons holding or acting in public offices;
- (d) provide for the rights and obligations of officers and employees;
- (e) promote equality of employment opportunity in the service.

3. (1) Except as herein otherwise provided, and unless explicitly provided to the contrary in any enactment, these Orders applies to Application.

- (a) every post, employment, occupation with the Government whether within or outside the Virgin Islands; and
- (b) to every person appointed or employed therein whether before or after the commencement of these Orders.

(2) A reference in these ~~Aet~~ Order to a period of employment shall, unless the context otherwise provides, be construed as including employment before, on or after the date of commencement of this ~~Aet~~ Order.

(3) For the avoidance of doubt, this ~~Aet~~ Order does not apply to an independent contractor or consultant.

Interpretation.

4. (1) In these Orders, unless the context otherwise requires,

“Accounting Officer” means the Accounting Officer appointed under section 21(1) of the Public Finance Management Act, 2004; No. 4 of 2004.

“acting appointment” means the temporary appointment of an officer to substitute in a higher level office, if that officer is considered qualified to perform the functions of the higher level office, whether or not that office is vacant;

“advertisement” includes every form of publication or notice whether to the public or not, and whether in a newspaper, electronic media, or other media or publication;

“allowances” means a financial entitlement paid to officers and employees in addition to salary;

“applicant or candidate” means a person who has filed an application of employment with the service for examination;

“Appointing Authority” means any officer or group of persons, including any board or committee, having the power by law to make an appointment to a post;

“appointment” means the conferment of an office of emolument in the service and includes a transfer, a promotion, and an acting appointment;

“calendar year” means any twelve-month period beginning January 1 and ending December 31;

“class” or “class of posts” means a post or group of posts involving duties and responsibilities so similar that the same or like qualifications may reasonably be required for, and the same title, schedule or grade of pay can be reasonably applied to, all posts in the group;

“classification” means the assignment of an office to a grade in the service;

“classification plan” means the orderly arrangement by which positions in the service have been allocated by class and for which written specifications describing the duties, responsibilities and qualifications for each class;

“Committee of Senior ~~Managers~~Public Officers” means the Committee established under ~~Part~~Chapter X;

“conditions of service” means the laws, codes, regulations, orders and other instruments that regulate the terms of service of an officer or employee, including (without prejudice to the generality of the foregoing) provisions regulating his or her tenure of office, transfer, promotion, disciplinary control, remuneration, leave and passages;

“Constitution” means the Virgin Islands Constitution Order 2007;

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“Constitutionally Established Heads” means the Attorney General, Auditor General, Cabinet Secretary, Complaints Commissioner, Director of Public Prosecutions, and each of whom has responsibility for the management of an office specified in Part D of ~~Schedule~~ Appendix 1;

Schedule 1

“contract officer” means an officer engaged by means of a contract for a fixed term in the established division;

“court” means a court of competent jurisdiction;

“days” means working days;

“demotion” means a change in the status of an officer or employee from a position in one class to a position in another class of lower rank as measured by salary range, minimum qualifications, or duties, or a reduction in an employee's pay to a lower rate in the pay range assigned to the class;

“department” means any entity in the service that is listed in ~~Schedule~~ Appendix 1;

Schedule 1

“deployment” means, in relation to officers and employees, the ~~assignment~~^[AS3] of an officer or employee for duties within a Ministry or Department, not involving a change in remuneration or duties;

“Director” means the person holding or acting in the office of Director of Human Resources;

“employee” means any of the persons employed to the non-established division referred to in ~~section~~ Order 72(3);

“employee record” means a record of a person’s employment in the service which includes

- (a) the employment of the person in any department or ministry; and
- (b) any periods of employment in the public service, whether occurring consecutively, concurrently or otherwise;

“employment” means engagement under a contract of service or of apprenticeship or a contract to execute personally any work or labour;

“establishment” means an office or post which has been created for the normal and regular requirements of the service for which funds have been allocated for the payment of emoluments and included in the Annual Budget Estimates of the Virgin Islands;

Schedule 1

“grade” means any of the grades listed in Schedule 1, and consists of a group of one or more posts in one or more departments which bear a common designation and are filled directly through an appointment to the grade and attracting the same level of remuneration;

“Head of Department” means an officer charged with the responsibility for the management of a department specified listed in Part C of Schedule Appendix 1;

Schedule 1

“interdiction” means the temporary stoppage of an officer or employee from exercising the powers and functions of his or her office to pave way for investigation of a case;

“job description” means the official description of a class of position which describes the nature of work, provides examples of work performed, and knowledge, skills and abilities and states the generally accepted minimum qualifications required for employment;

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“Judicial and Legal Services Commission” means the Commission established under section 94 of the Constitution;

“leave” means any of the categories of leave referred to in ~~Part~~Chapter XIX;

Schedule 3

“misconduct” means any conduct or behavior categorised either as gross or minor misconduct as specified in Schedule 3;

“Minister” means the Minister responsible for the administration of a ministry and includes a Junior Minister;

“ministerial staff” includes special advisors and private secretaries to Ministers;

“ministry” means the whole of a division of government administration, the actions of which a Minister is accountable or responsible to the House of Assembly and includes a departmental section or unit which forms part thereof, but does not include a statutory corporation or a non-ministerial department;

“non-establishment” means a temporary office or post which has been created for the requirements, not being the normal and regular requirements, of the service and does not entitle a person to a pension;

“non-ministerial department” means the whole of a department of Government for the actions of which a department specified in Part E of Schedule 1 is accountable to the Governor, and includes a departmental section, division or unit which forms part of the non-ministerial department;

Schedule 1

“officer” or “public officer” means a person appointed to an office or post in the established division referred to in ~~section~~ Order 6872(2);

“pensions law” means the Pensions Act and any regulations made thereunder;

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“pensionable officer” means a person appointed to an office or post in the established division who has completed a probationary period, which entitles the person to a pension;

“Permanent Secretary” means the holder of an office specified in Part B of Schedule 1;

Schedule 1

“post” means any office in the service for which financial provision exists;

“probationary period” means the working period during which an officer or employee is required to demonstrate his or her suitability by the actual performance of the duties and responsibilities of his or her position;

“probationary officer” means a person appointed to an office or post in the established division who has not completed the probationary period;

“promotion” means a change in the status of an officer or employee from a position in one class to a vacant position in another class of higher rank as measured by salary range and increased level of duties or responsibilities;

“provisional officer” means a person appointed to an office who does not meet the minimum qualifications for office or position in the service;

“public office” or “office” means any office of emolument in the service, whether pensionable or non-pensionable, which is shown under a personal emoluments sub-head in the Annual Budget Estimates of the Virgin Islands;

“Public Service” or “service” means the service of the Crown in a civil capacity in respect of the Government of the Virgin Islands but shall not be construed as including service in

- (a) the office of Governor, Premier, Ministers, Junior Ministers, Leader of the Opposition, Speaker, Deputy Speaker or member of the House of Assembly not being a Minister;
- (b) the office or a member of the Judicial and Legal Services Commission, the Public Service Commission, Teaching Service Commission or the Police Service Commission;
- (c) 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
- (d) the office of a Judge;

“Public Service Commission” means the Commission established under section 91 of the Constitution;

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“relevant Commission” or “Commission” means the Public Service Commission, the Teaching Service Commission or the Judicial and Legal Services Commission, as the case may be;

“relevant minister” means, in relation to a ministry, the minister having responsibility for that ministry;

“salary” means a regular fixed payment that an officer or employee earns for performing work during a specific period of time;

“salary range” means a minimum and maximum salary limit linked to a specific level of work;

“scale” in relation to salary, includes salary at a fixed rate;

“seniority” means the ranking order of a post in relation to another or the date on which the officer or employee is deemed to have entered that post in relation to another officer or employee;

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“Teaching Service Commission” means the Commission established under section 93 of the Constitution;

“temporary appointment” means the appointment of a person to a non-established office or the appointment of a person temporarily to a pensionable office or an employee engaged to perform specific duties because of a temporary increase in the work load;

“transfer” means the appointment of an officer or employee on a permanent basis to another post on the same grade where there is no foreseeable intention that he or she will return to the post that the officer was in prior to the transfer;

(2) In this ~~Act~~Order, unless the context otherwise requires a reference to a Permanent Secretary or Head of Department shall include

- (a) a reference to a Constitutionally Established Heads; or
- (b) a reference to a Head of Department who does not report to a Minister directly or through a Permanent Secretary;

“remuneration” means reward of employment in the form of salary, allowances, benefits (such as medical and pension plans), bonuses and monetary value of non-cash incentives.

Purpose.

PART II THE PUBLIC SERVICE

The Public
Service.

~~5. (1) The organisation in existence immediately before the coming into force of this ~~Act~~ Order known as the “Public ~~AS4~~ Service” is, and shall, subject to this ~~Act~~Order, continue to be, the Public Service.~~

(2) The public offices in the service are set out in Part A of ~~Schedule Appendix 1~~ shall from time to time be deemed to constitute the service for the purposes of this ~~Act~~Order.

Schedule 1

~~(3) — A person who holds an office in the service that by subsection (2) is deemed to be an office in the service and the persons holding those offices are shall be referred to as a public officer.~~

6. (1) ~~Without limiting its role, the role of the service is to~~

The role of the
service.

- ~~(a) — provide and administer the public services for which the Government is responsible with integrity, honesty, and impartiality;~~

- ~~(b) assist with the formulation of the policies of the Government by providing frank, honest, comprehensive, accurate and timely advice; and~~
- ~~(c) implement policy, projects, programmes and decisions of the Government.~~

(2) All officers and employees in the service, while carrying out the role, shall uphold the principles and values specified in ~~Part~~Chapter IV.

Ministries and
departments.
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7. (1) Ministers are assigned a portfolio of responsibilities in accordance with section 56 of the Constitution including responsibility for a ministry which consists of

- (a) the Minister and his or her secretariat;
- (b) the office of the Permanent Secretary and other officers or employees of the ministry;
- (c) such other departments, divisions, sections, or other units as may be placed or established within that ministry.

(2) Where more than one Permanent Secretary reports to the same Minister, the scope of responsibilities of each Permanent Secretary is delineated by the Governor.

(3) Ministries and departments of Government and their functions are those listed in Schedule 1.

Schedule 1

~~10. (1) Staff to be assigned to a Minister (herein referred to as “ministerial staff”) shall be deemed to be occupying posts of special trust and shall be appointed thereto, on the basis of a contract of employment between the person and the DirectorAccounting Officer.~~ ~~[SH5]~~[FL6]

Employing
ministerial staff.

~~(2) The contract of employment shall~~

- ~~(a) be in writing and signed by or on behalf of the parties to that contract; and~~
- ~~specify the terms and conditions of employment and the day on which the employment expires.~~

~~(3) The employment of ministerial staff terminates~~

(a) ~~if the Minister for whose assistance the ministerial staff was employed ceases to hold office as such; or~~

(a) ~~on the day specified in the relevant contract of employment as the day on which that employment expires; |~~

[FL7]

~~whichever comes first.~~

~~(4) An officer is disqualified from being assigned under subsection (1) as a ministerial staff.~~ [FL8]

~~(5) Notwithstanding anything in any other enactment, a person who immediately before his or her employment as a ministerial staff, was not employed in the service is not, while he or she remains employed as a ministerial staff or so engaged under a contract for services, eligible to apply for, or to be appointed to, any office or post in the service.~~

~~(5) Notwithstanding anything in any other enactment, Aa ministerial staff shall not, otherwise than with the agreement of the Permanent Secretary or Head of Department, direct an officer or employee of that ministry or department in relation to the manner in which that officer or employee is to perform the functions of his or her office in that ministry or department.~~ [FL9]

PART III DUTIES, RESPONSIBILITIES AND POWERS OF THE DEPUTY GOVERNOR

811. (1) The role of the Deputy Governor is to assist the Governor in the exercise of his or her functions relating to matters for which the Governor is responsible under section 60 of the Constitution, where the Governor, in 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

Head of the public service Deputy Governor.

(2) The Deputy Governor , as the head of the service, shall be the Chairperson of the Committee of Senior ManagersPublic Officers.

912. —The office of the Deputy Governor is a full-time established office and the holder of that office holds it subject to section 36 of the Constitution.

Office of Deputy Governor.

Remuneration of
the Deputy
Governor.
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103. (1) Subject to section 108 of the Constitution, the remuneration of the Deputy Governor shall be in accordance with the Annual Budget Estimates of the Virgin Islands.

(2) The rate of remuneration of the Deputy Governor shall not be reduced during a term of office of the Deputy Governor without his or her consent.

Principal
objectives of the
office of Deputy
Governor.

114. The principal objectives^[AS10] of the office of the Deputy Governor are to

- (a) promote and maintain the highest levels of integrity, impartiality, equity, accountability and leadership across the service;
- (b) improve the capability of the service to provide strategic and innovative policy advice, implement the decisions of the Government and meet public expectations;
- (c) attract~~act~~ and retain a high caliber professional workforce in conjunction with the Department of Human Resources;
- (d) ensure the recruitment and selection processes comply with the merit principles and adhere to professional standards;
- (e) foster a public service culture in which service to clients, initiative, individual responsibility and the achievement of results are strongly valued;
- (f) build public confidence in the service; and
- (g) support the Government in achieving outcomes through strengthening the capability of the service.

Functions of the
Deputy
Governor.
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125. (1) ~~Subject to the Constitution, and these Act Order and any Regulations made thereunder, the functions of~~^[AS11] the Deputy Governor shall include

- ~~(a) managing the performance of Permanent Secretaries by agreeing to annual performance agreements and assessing the performance of Permanent Secretaries in accordance with section Order 3741;~~
- ~~(b) providing oversight and the administration of the Orders established under section Order 240 and developing from~~

~~time to time additional Orders for the management and growth of the service;~~

- ~~(c) — the identification of reform opportunities for the service and to advise the Governor on policy innovations and strategy in those areas of reform;~~
- ~~(d) — leading the strategic development and management of the service in relation to the following:

 - ~~(i) — compliance with the Orders;~~
 - ~~(ii) — advising the Governor on the leadership structure for the service;~~
 - ~~(iii) — advising the Governor on appropriate strategies, policies and practices in relation to the structure of the service;~~
 - ~~(iv) — developing and advising the Governor on service delivery strategies and models for the public service through collaboration with the private business sector, the not for profit sector and with the wider community;~~~~
- ~~(e) — promoting equity and diversity, including developing strategies to ensure the service reflects the diversity of the wider community; and~~
- ~~(f) — advising the Governor on appropriate strategies, policies and practices in relation to such other matters as the Governor may determine from time to time, and to monitor, co-ordinate and assist in the implementation of strategies, policies and practices in such other cases as the Governor may determine from time to time.~~

~~(2) — In carrying out his or her functions, the Deputy Governor~~

- ~~(a) — acts independently and is not to be subject to the direction of any other person or authority other than the Governor pursuant to the Constitution;~~
- ~~(b) — may request from Permanent Secretaries and Heads of Department information concerning the activities of those ministries and departments;~~

- ~~(c) — shall give directions of a general nature respecting the performance, by officers or employees, of their duties in order to promote the continuing development of the service;~~
- ~~(d) — shall conduct such inspections or investigations and make or receive such reports as the Deputy Governor may consider necessary or the Governor may direct;~~
- ~~(e) — may appoint committees, panels and other bodies for the purposes of

 - ~~(i) — carrying out the inspections, or investigations under paragraph (d); and~~
 - ~~(ii) — any other matter the Deputy Governor deems appropriate or as the Governor may direct.~~~~

~~(3) — Nothing in this section Order shall be construed so as to limit or affect in any way the functions or duties of the Deputy Governor conferred or imposed on him or her under the Constitution or any other enactment.~~

136. (1) The Deputy Governor in consultation with the Governor may issue written instructions ^{AS 12} concerning the following:

- ~~(a) — the management and administration of the service;~~
- ~~(b) — human resource management, including official conduct;~~
- ~~(c) — the taking of improvement action; and~~
- ~~(d) — any other matter in respect of which the Deputy Governor's instructions are required or permitted under this Act Order.~~

~~(2) — The Deputy Governor's instructions shall be made public in such manner as the Deputy Governor thinks appropriate.~~

~~(3) — The Deputy Governor's instructions may apply~~

- ~~(a) — generally;~~
- ~~(b) — to an office or class of offices specified in the instructions;
or~~
- ~~(c) — to a class of officers or employees specified in the instructions.~~

Deputy
Governor to
issue
instructions.

(4) — The Deputy Governor may amend or revoke his or her instructions and before issuing, amending or revoking an instruction, consult such persons as he or she considers it desirable or practicable to consult.

~~147.~~ (1) — The Deputy Governor shall, as soon as practicable, ~~in each year~~^{AS13}, prepare a report to the Governor on the following:

Reports to the Governor from the Deputy Governor.

(a) — the state of the administration and management of the service which includes

(i) — an assessment of the performance of the whole of the service, including notable achievements, challenges and priorities; and

(ii) — an analysis of service workforce data;

(b) — the activities of the Committee of Senior ~~Managers~~^{Public Officers};

(c) — the compliance or non-compliance by officers and employees, either generally or in particular, with the principles set out in ~~Part~~^{Chapter} IV and with service standards, and the Orders; and

(d) — any other matters arising out of the performance of the Deputy Governor's functions that in his or her opinion is of such significance as to require reporting on.

(2) — Notwithstanding ~~subsection~~^{paragraph} (1), the Deputy Governor may, at any time report, in writing to the Governor on any matter relating to the service.

(3) — The Governor shall cause the report from the Deputy Governor to be tabled, in the House of Assembly, as soon as practicable, after it is received by the Governor.

~~18. (1)~~ Public Officers shall serve the Government of the day, whatever their political persuasion, ensuring their service is

Impartiality and objectivity.
18. (1)

(a) to the best of their ability

(b) in a manner that maintains political impartiality and

(c) is in line with the requirements of these Orders.

(2) Public Officers shall act in a way which

(a) deserves and retains the confidence of Ministers, while at the same time ensuring they will be able to establish the same relationship with those whom they may be required to serve in some future Government; and

(b) complies with any restrictions that have been laid down concerning their own political activities as per Order XXX56 and any relevant policy guidelines

(3) Public Officers shall not

(a) act in a way that is determined by party political considerations,

(b) use official resources for party political purposes;

allow ~~your~~ his or her personal political views to determine any advice you give or your actions.

I.—

(4) Where Public Officers perceive that they are subject to political pressure this should be reported to the Deputy Governor who will investigate the matter and if necessary address it with the relevant persons involved.

(5) All Public Officers are subject to the Integrity in Public Life Policy and any associated Acts.

PART IV PUBLIC SERVICE VALUES AND PRINCIPLES

Public service
values.

195. The values to which the public service aspires and which governs its management and operations include but are not limited to the following:

- (a) to serve diligently the government of the day, the House of Assembly and the public in an apolitical, impartial and courteous manner and to deliver high-quality policy advice and services;
- (b) to uphold the proper administration of justice and the principles of natural justice and, to support public participation in the democratic process;
- (c) to strive continually for efficiency, effectiveness and value for money in all government activities;

- (d) contributes towards the coordination of government policy in conjunction with departments, government entities and statutory corporations;
- (e) to adhere to the highest ethical, moral and professional standards at all times;
- (f) to encourage creativity and innovation and, recognise the achievement of results;
- (g) to be an employer that cares, is non-discriminatory, makes employment decisions on the basis of merit, and recognises the aims and aspirations of its officers and employees, regardless of gender or physical disabilities;
- (h) to be an employer that encourages workplace relations that value communication, consultation, cooperation and input from officers and employees, either individually or collectively, on matters that affect their workplace and conditions of service; and
- (i) to provide a safe and healthy working environment.

1620. (1) The principles of public administration and management to be observed in, and in relation to the service are that the service is

Public administration and management principles.

- (a) to be administered in a manner which emphasises the importance of responsive, equitable, effective and efficient service delivery to the community and the Government;
- (b) to maintain impartiality and integrity in informing, advising and assisting the Government; and
- (c) to be so structured and organised as to achieve and maintain operational responsiveness and flexibility, thus enabling it to adapt quickly and effectively to changes in government policies and priorities.

(2) To achieve these principles of public administration and management

- (a) ministries and departments are structured and administered to enable decisions to be made, and action taken, without excessive formality and with a minimum of delay;
- (b) administrative responsibilities shall be clearly defined and authority delegated sufficiently to ensure that those to

whom responsibilities are assigned have adequate authority to deal expeditiously with questions that arise in the course of discharging those responsibilities;

- (c) ministries and departments should have as their goal a continued improvement in the efficiency and effectiveness of their performance and should be administered with that goal always in view;
- (d) resources are to be deployed so as to ensure their most efficient and effective use and proper standards of financial management and accounting are to be maintained at all times; and
- (e) proper standards are to be maintained at all times in the creation, management, maintenance and retention of records.

(3) The public administration and management principles shall be upheld by

- (a) the Deputy Governor;
- (b) Permanent Secretaries;
- (c) Heads of Department; and
- (d) officers and employees.

Human resources
management
principles.

1721. The principles of human resource management that are to be observed in and in relation to the service are that

- (a) all selection processes are to be directed towards, and based on, a proper assessment of merit and equity and no power with regard to human resource management is to be exercised on the basis of nepotism, political patronage or political influence;
- (b) officers and employees are to be treated fairly and consistently and are not to be subjected to arbitrary or capricious administrative acts;
- (c) working environments are to be equitable and flexible in which all officers and employees are
 - (i) treated fairly and reasonably;

- (ii) remunerated at rates appropriate to their responsibilities;
- (iii) have reasonable access to training and development; and
- (iv) have reasonable access to redress when adversely affected by improper or unreasonable decisions;
- (d) there is to be no unlawful discrimination against officers, employees and persons seeking employment in the service; and
- (e) officers and employees are to be provided with safe and healthy working conditions.

2182. All officers and employees shall serve the Government in accordance with the principles set out in this **PartChapter** and any standards formulated under **section-Order_19(1)(b)** and shall acknowledge

Principles of accountability.

- (a) the accountability of officers and employees, through their Permanent Secretaries or Heads of Department;
- (b) the duty of all officers and employees to discharge their functions reasonably and in accordance with the law;
- (c) the duty to comply with the law, including international law and treaty obligations, and to uphold the administration of justice; and
- (d) the ethical standards governing particular professions and the service.

2193. (1) The recruitment, appointment and promotions in the service are to be made on the basis of merit, performance, impartiality and the highest standards of integrity and where appropriate, consideration may be given towards seniority and experience.

Merit principle.

(2) Selection for appointment, promotion or transfer to a post in the service shall be free from nepotism, political patronage or political influence.

(3) The administrative processes that shall be followed for merit based appointments shall include, where applicable, the advertisement of the vacancy in an office in the prescribed format, together with the minimum specification for applicants to the post.

(4) In applying the merit principle to a person, the following shall be taken into account:

- (a) the extent to which the person has abilities, aptitude, skills, qualifications, knowledge, experience and personal qualities relevant to the carrying out of the duties in question;
- (b) the way in which the person carried out any previous employment or occupational duties; and
- (c) the extent to which the person has potential for development.

(5) For the purposes of this ~~section~~ Order, a decision relating to the appointment or promotion is based on merit if

- (a) all eligible persons were given a reasonable opportunity to apply to perform the relevant duties;
- (b) an assessment is made of the relative suitability of the candidates for the duties, using an open competitive selection process;
- (c) the assessment is based on the relationship between the candidates' work-related competencies and the work-related competencies genuinely required for the duties;
- (d) the assessment focuses on the relative capacity of the candidates to achieve outcomes related to the duties;
- (e) the assessment is the primary consideration in making the decision.

(6) This ~~section~~ Order does not apply to

- (a) the promotion of an officer or employee by way of reclassification of the post;
- (b) the employment of a person under the Cadet Programme or any other programme that may be established;
- (c) the employment of persons into the non-established division; and

(d) the employment of ministerial staff.

204. (1) The following Codes, specified ~~contained in Schedules Appendix 3~~ and 4 ~~are hereby established~~ **apply to all public officers**

Codes.
Schedule 3
Schedule 4

(a) the Code of Conduct and Ethics that establishes standards of conduct in the service; and

(b) the Code of Discipline that is aimed at enforcing the standards in subparagraph (b).

(2) ~~It shall be the duty of~~ All officers and employees shall comply with the Codes set out in Appendix 3 and 4 and failure to do so on the part of any officer or employee may constitute grounds for disciplinary proceedings against that officer or employee.

~~(3) The Deputy Governor, in consultation with the Director, may issue instructions to ensure compliance with the Codes established under~~ subsection paragraph (1).

215. (1) Except where otherwise directed by the Governor, every person

Oath or
affirmation.

(a) on first appointment to the service; or

(b) on promotion,

shall ~~take the oath or affirmation~~ AS15 of office and confidentiality set out in Part B of Schedule 2.

Schedule 2

(2) An oath or affirmation taken under subsection-paragraph (1) shall be administered in the presence of a Judge, a Magistrate, the Registrar of the High Court or a Commissioner of Oaths.

226. (1) Officers and employees shall not, without authority, disclose official information that has been communicated in confidence within the ministry or department to them, or received in confidence from others.

Confidentiality
of information.

(2) Officers and employees shall not seek to frustrate or influence the policies, decisions or actions of Ministers or the Government by the unauthorised, improper or premature disclosure outside of the public service of any information to which the officer or employee had access to in the course of his or her official duties.

(3) Nothing in this section Order overrides existing legal obligations to maintain the confidentiality of particular information.

(4) Notwithstanding that an officer or employee is no longer employed in the service, the provisions of this ~~section~~Order continue to apply to that officer or employee for a period of 5 years, after he or she left the service.

(5) An officer or employee who contravenes ~~subsection-paragraphs~~ (1) or (2) commits gross misconduct and shall be subject to disciplinary proceedings.

Conflict of
interest and
disclosure.

237. (1) A conflict of interest may arise where an officer or employee has a personal or financial interest sufficient to influence or appear to influence the objective exercise of his or her official duties and therefore, officers or employees shall avoid any personal or financial interest that could directly or indirectly give rise to, or the appearance of, a conflict of interest.

(2) An officer or employee shall disclose to the Deputy Governor, in the prescribed manner, a potential or actual conflict of interest including notification of all relevant personal, financial, business or other interests, in particular

- (a) any directorship, partnership, agency or any shareholding in an entity;
- (b) any interest in any activity or business in which or with which the Government is engaged;
- (c) any interest in goods or services recommended or supplied to the Government;
- (d) any sponsorships;
- (e) any gifts of any value, other than gifts received from a family member;
- (f) any benefits; and
- (g) any immovable property.

(3) For purposes of ~~subsection-paragraph~~ (2), a disclosure by an officer or employee shall include a disclosure of all the financial, business or other interests of his or her spouse or a person living with that officer or employee as if they were married to each other.

(4) Subject to ~~section~~Order **5862**, in considering outside employment, officers or employees shall avoid any financial or other interest or undertaking that could directly or indirectly compromise the performance of their.

(5) Former officers or employees shall ensure that they do not accept employment or engage in activities which may cast doubts on their own integrity or that of the ministry or department in which they were previously employed or of the service generally.

(6) If a conflict of interest does arise, the officer or employee shall notify his or her Permanent Secretary or Head of Department, in the prescribed manner, as soon as possible, but not more than 14 days, whenever any of such conflict of interest arises namely, upon assuming office, change in duties or due to a change in circumstances.

(7) Failure by an officer or employee to comply with the obligation referred to in this ~~section~~Order, constitutes gross misconduct and the officer or employee may be subject to disciplinary proceedings.

~~PART~~CHAPTER V

ROLE OF RELEVANT COMMISSIONS

248. (1) For the purposes of this ~~Act~~Order, relevant Commissions represent^{AS16} the Government and their performance is provided for under the Service Commissions Act, 2011.

Commissions represent the Government.
No. 8 of 2011

(2) Each Commission shall, in carrying out its functions, ensure transparency, equity, fairness and justice; and shall regard the proper management of the service, including the development of the human resources of the service, as its primary goal.

~~PART~~CHAPTER VI

CONSTITUTIONALLY ESTABLISHED HEADS

- 295.** Constitutionally Established Heads shall be appointed as follows:
- (a) the Attorney General, in accordance with section 95 of the Constitution;
 - (b) the Auditor General, in accordance with section 92 of the Constitution;
 - (c) The Cabinet Secretary, in accordance with section 92 (5) of the Constitution;
 - (d) the Complaints Commissioner, in accordance with section 110 of the Constitution;

Appointment of Constitutionally Established Heads.
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- (e) the Director of Public Prosecution, in accordance with section 95 of the Constitution; and
- (f) the Register of Interests, in accordance with section 112 of the Constitution.

Remuneration of
Constitutionally
Established
Heads.

2630. (1) Subject to the Constitution and this ~~section~~ Order, Constitutionally Established Head are employed on such terms and conditions as the Governor may^[AS17] determine.

(2) A Constitutionally Established Head's salary shall be within the salary scale specified in the Annual Budget Estimates of the Virgin Islands and he or she shall be remunerated as follows:

- (a) the Attorney General, in accordance with section 108 of the Constitution;
- (b) the Auditor General, in accordance with section 108 of the Constitution;
- (c) The Cabinet Secretary, in accordance with the terms and conditions specified in the employment agreement;
- (d) the Complaints Commissioner, in accordance with section 108 of the Constitution;
- (e) the Director of Public Prosecutions, in accordance with section 108 of the Constitution; and
- (f) the Register of Interests, in accordance with section 108 of the Constitution.

(3) A Constitutionally Established Head's remuneration shall include a performance-related portion established in accordance with the provisions of regulations, the payment of which shall be based on the Constitutionally Established Head's performance, as determined by the Governor.

(4) A Constitutionally Established Head's remuneration may not be altered to his or her disadvantage without his or her consent.

Functions of a
Constitutionally
Established
Head.

2731. (1) Subject to this ~~Act~~ Order and to any other enactment relating to his or her department or office, the functions of a Constitutionally Established Head, are to manage that department or office as the case may be and in particular

- (a) to provide strategic direction and a focus on results for that department or office;

- (b) to provide advice on policy to the Governor or other relevant arm of government;
- (c) to plan for and undertake financial, and information management in relation to that department or office or office and to monitor the administrative and financial performance of that department or office;
- (d) assess the appropriateness, effectiveness and efficiency of the service provided to the public by that department or office;
- (e) to be responsive on matters relating to the collective interests of Government by that department or office;
- (f) to ensure the appropriate utilisation of resources within that department or office;
- (g) to ensure the proper organisation of that department or office, including the devising of organisational structures and arrangements to the core and support functions of the department or office;
- (h) to ensure the appropriate division of responsibilities between, and the assignment of functions to, the officers, employees and ministerial staff employed in that department or office;
- (i) to evaluate the performance of officers and employees employed in that department or office in any manner that the Director may prescribe and make recommendations to the Director on staff training and development;
- (j) to hold general staff meetings at least twice per year to communicate and review the strategic direction, major challenges and the goals and objectives of the department or office;
- (k) to seek to resolve or redress the grievances of officers and employees in that department or office;
- (l) subject to the Archives and Records Management Act, No. 5 of 2010, 2010, to ensure that the department or office keeps proper records; and

- (m) to perform such other functions as are conferred or imposed on the Constitutionally Established Head under this ~~Act~~ Order or any other enactment.

(2) In performing his or her functions a Constitutionally Established Head, shall endeavour to

- (a) attain performance objectives agreed with the Governor;
- (b) achieve Government objectives, in coordination as necessary with other ministries, department or offices, and other government entities;
- (c) achieve satisfactory levels of efficiency and quality in the delivery of any services to the public;
- (d) promote and uphold the values and principles set out in ~~Part~~Chapter IV and applicable policies and directives governing staff conduct, management and the use of resources;
- (e) comply with public service standards, Orders of conduct, ethics and any Orders that may be established.

(3) A Constitutionally Established Head has power to do all things that are necessary or convenient to be done for or in connection, with the performance of his or her functions.

(4) A Constitutionally Established Head shall be individually responsible in relation to his or her area of responsibility for the matters listed in ~~subsection-paragraph~~ (2) and that Constitutionally Established Head shall be liable to disciplinary proceedings, if he or she fails to prevent or correct misconduct or negligence on the part of his or her subordinates where he or she could reasonably have taken steps to do so.

Removal from
office of a
Constitutionally
Established
Head.
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3282.
as follows:

- A Constitutionally Established Head shall be removed from office
- (a) the Attorney General, in accordance with section 95(9) of the Constitution;
 - (b) the Auditor General, in accordance with section 92 of the Constitution;
 - (c) the Cabinet Secretary, in accordance section 92 of the Constitution;

- (d) the Complaints Commissioner, in accordance with section 110 of the Constitution;
- (e) the Director of Public Prosecution, in accordance with section 95(9) of the Constitution; and
- (f) the Register of Interests, in accordance with section 112 of the Constitution.

3329.

The Governor shall, for each financial year

Annual performance agreement with a Constitutionally Established Head.

- (a) enter into an annual performance agreement with a Constitutionally Established Head which shall specify the performance expected of the Constitutionally Established Head for that financial year; and
- (b) ensure that the performance agreement under subparagraph (a) is sufficiently detailed and clear that it provides a proper basis for the assessment of a Constitutionally Established Head's performance at the end of a financial year.

304. (1) Subject to subsection—paragraph (5), the performance of a Constitutionally Established Head is to be reviewed at the end of each financial year by means of an annual performance assessment undertaken by the Governor and involving the Constitutionally Established Head concerned.

Performance assessment of a Constitutionally Established Head.

(2) Before completing a Constitutionally Established Head's performance assessment, the Governor shall consult with the Constitutionally Established Head about the extent to which he or she has achieved the performance specified in the performance agreement for the financial year.

(3) In undertaking a Constitutionally Established Head's performance assessment and determining the amount of any performance-related remuneration payable to him or her, the Governor shall base his or her assessment on a factual comparison of the Constitutionally Established Head's actual performance with that specified in his performance agreement for the financial year, together with any modification of the performance agreement.

(4) The Governor shall complete the performance assessment of a Constitutionally Established Head within 90 days after the end of a financial year or as soon as practicable thereafter.

(5) The Governor, in carrying out the annual performance assessments, may consult such persons as the Governor considers desirable and practicable to consult.

(6) The Governor may delegate his or her functions under this ~~section~~ Order to the Deputy Governor, subject to such exceptions and conditions as the Governor may specify.

PART-CHAPTER VII

PERMANENT SECRETARIES

Application of
this ~~Part~~Chapter.

351. ~~For the avoidance of doubt, this ~~Part~~Chapter does not apply to a Constitutionally Established Head.~~

Appointment of
Permanent
Secretaries.

326. ~~(4)~~ A Permanent Secretary is appointed by the Governor, acting in accordance with the advice of the Public Service Commission.

Functions of
Permanent
Secretaries.

337. (1) ~~Subject to this ~~Act~~ Order and to any other enactment relating~~^[AS18] ~~to his or her ministry, the functions~~ The role of a Permanent Secretary, under the direction of a Minister, are to manage that ministry and in particular

- (a) to provide strategic direction and a focus on results for that ministry;
- (b) to provide advice on policy to the relevant Minister;
- (c) to plan for and undertake financial, and information management in relation to that ministry and to monitor the administrative and financial performance of that ministry;
- (d) assess the appropriateness, effectiveness and efficiency of the service provided by the ministry;
- (e) to be responsive on matters relating to the collective interests of Government by a ministry;
- (f) to ensure the appropriate utilisation of resources within that ministry;
- (g) to ensure the proper organisation of that ministry, including the devising of organisational structures and arrangements to the core and support functions of the ministry;
- (h) to ensure the appropriate division of responsibilities between, and the assignment of functions to, the officers, employees and ministerial staff employed in that ministry;

- (i) to evaluate the performance of officers and employees employed in that ministry in any manner that the Director may prescribe and make recommendations to the Director on staff training, performance rewards and development;
 - (j) to hold general staff meetings at least twice per year to communicate and review the strategic direction, major challenges and the goals and objectives of the ministry;
 - (k) to seek to resolve or redress the grievances of officers and employees in that ministry;
 - (l) subject to the Archives and Records Management Act, No. 5 of 2010, 2010, to ensure that the ministry keeps proper records; and
 - (m) to perform such other functions as are conferred or imposed on the Permanent Secretary under this ~~Act~~ Order or any other enactment.
- (2) In performing his or her functions a Permanent Secretary, shall
- (a) endeavour to
 - (i) attain performance objectives agreed with the relevant Minister;
 - (ii) achieve Government objectives, in coordination, as necessary, with other ministries, departments, and other government entities;
 - (iii) achieve satisfactory levels of efficiency and quality in the delivery of any services to the public;
 - (iv) promote and uphold the values and principles set out in ~~Part~~Chapter IV and applicable policies and directives governing staff conduct, management and the use of resources;
 - (b) comply with the Deputy Governor's instructions, service standards, Orders of conduct, ethics and any Orders that may be established;
 - (c) comply with any lawful directions or instructions given to him or her from time to time by the relevant Minister.

(3) Except as provided in any other enactment, a Permanent Secretary is not responsible for the performance of functions or duties or the exercise of powers in a department created under the Constitution or other enactment for which stewardship is vested in a Head of Department who acts, for all intents and purposes, in the capacity of a Permanent Secretary.

(4) A Permanent Secretary shall be individually responsible in relation to his or her area of responsibility for the matters listed in ~~subsection paragraph~~ (2) and that Permanent Secretary shall be liable to disciplinary proceedings under this ~~Act~~ Order, if he or she fails to prevent or correct misconduct or negligence on the part of his or her subordinates where he or she could reasonably have taken steps to do so.

Supervision of
departments by
Permanent
Secretaries.
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~~384. (1) Subject to section 56 (5) of the Constitution, a Permanent Secretary may give directions to and set targets for a Head of Department of a department, under that Permanent Secretary, on any matter in fulfillment by the Head of Department of his or her duties, and the Permanent Secretary shall monitor and assess the Head of Department's performance in relation to such directions and targets.~~

~~(2) — Notwithstanding ~~subsection paragraph~~ (1) a Permanent Secretary may not give directions to or set targets for a Head of Department on matters where the Head of Department is required by any other enactment to act independently or in accordance with the direction of a person or authority other than a Minister.~~

Delegation of
powers.

~~395. (1) Subject to any enactment, a Permanent Secretary may delegate any power or duty of the Permanent Secretary under this ~~Act~~ Order to an officer or an employee on the basis of~~

~~(a) — seniority; or~~

~~(b) — the specialised knowledge, expertise or resource of the person to whom the power or duty is delegated.~~

~~(2) — The delegation shall be in writing and signed by the Permanent Secretary and the person to whom a power or duty is delegated under this ~~section~~ Order cannot delegate that power or duty.~~

~~(3) — If a power or duty is delegated under ~~subsection paragraph~~ (1), is exercised or performed by the delegate, that power or duty is to be taken to be exercised or performed by the Permanent Secretary who delegated it.~~

~~(4) — Nothing in this ~~section~~ Order limits the ability of the Permanent Secretary to perform a function though delegated to an officer or employee.~~

3640. (1) The remuneration of Permanent Secretaries shall be agreed from time to time between the Deputy Governor and the Permanent Secretary concerned.

Remuneration of Permanent Secretaries.

(2) The remuneration referred to in subsection-paragraph (1) shall

- (a) be within the salary scales specified in the Annual Budget Estimates of the Virgin Islands; and
- (b) include a performance-related portion, the payment of which shall be based on the performance of the Permanent Secretary as determined by the Governor.

3741. (1) The Deputy Governor shall, within 30 days of the annual budget approved by the House of Assembly, or as soon as practicable, enter into a performance agreement with each Permanent Secretary, which shall specify the performance expected of the Permanent Secretary for that financial year and the Deputy Governor shall consult with the relevant Minister.

Performance agreements and appraisals of Permanent Secretaries.

(2) The performance agreement shall include

- (a) the period to be covered by the performance agreement;
- (b) the performance expected of the Permanent Secretary; including the outputs that the Permanent Secretary is to produce during the performance period;
- (c) the competencies and behaviours expected of the Permanent Secretary during the performance period;
- (d) any training, skills or personal development that the Permanent Secretary is expected to undertake during the performance period;
- (e) any other performance expectations as may be specified and agreed between the Permanent Secretary and the Deputy Governor;
- (f) a signed acknowledgement by both parties to the agreement that they have discussed and agreed the performance agreement, together with the date on which that discussion occurred and the agreement was arrived at; and
- (g) such other matters as may be required by the Director to be included in the performance agreement.

(3) During a financial year the parties to a performance agreement may agree to modify the performance agreement.

(4) The performance of a Permanent Secretary is to be reviewed at the end of each financial year by means of an annual performance appraisal undertaken by the Deputy Governor and involving the Permanent Secretary concerned.

(5) Before completing a performance appraisal, the Deputy Governor shall consult with the relevant Minister and any other persons the Deputy Governor thinks relevant about their views on the extent to which the Permanent Secretary has achieved the performance specified in the performance agreement for the year.

(6) In undertaking the performance appraisal and determining the amount of any performance related remuneration, the Deputy Governor shall base his or her assessment on a factual comparison of actual performance with that specified in the performance agreement, for the financial year, together with any modifications to the agreement.

(7) The performance assessment is to be completed within 90 days after the end of the financial year, or as soon as is practicable.

Removal from
office of
Permanent
Secretaries.

4382. To the extent that the Permanent Secretary is a public officer, his or her removal from office shall be governed by the same rules governing the removal of officers and employees from the service.

Acting
Permanent
Secretary.

3943. Where there is a vacancy in an office of a Permanent Secretary or, a Permanent Secretary is absent from duty (for whatever cause arising) and the Permanent Secretary is unable to delegate his or her responsibilities⁹, to any other person, all or any of the functions, duties, and powers of the Permanent Secretary, may be exercised and performed by

- (a) a Deputy Permanent Secretary; or
- (b) a Head of Department under that ministry or another ministry; or
- (c) any person for the time being appointed by the Public Service Commission to exercise and perform them, whether the appointment has been made before the absence or vacancy occurs or while it continues.

404. (1) It shall be the duty of every Permanent Secretary to implement sound policies and practices to promote good health, welfare and safety in the workplace and to ensure that the provisions of Part IX of the Labour Order, 2010 or any enactment in respect of the health, safety and welfare of persons at work are observed in relation to the ministry or department to which the Permanent Secretary is assigned.

Duty of Permanent Secretaries in relation to health and safety.
No. 4 of 2010

(2) A Permanent Secretary shall be regarded as having discharged his or her duties under ~~subsection-paragraph~~ (1) where the Permanent Secretary has taken all actions that are necessary or appropriate in the circumstances or made reasonable attempts to do so.

~~PART-CHAPTER VIII~~ HEADS OF DEPARTMENT

415. The Governor appoints a Head of Department acting in accordance with the advice of a relevant Commission.

Appointment of Heads of Department.

426. (1) The ~~functions~~ role of a Head of Department are as follows to:

Functions of Heads of Department.

- (a) manage the activities and programmes of the department efficiently, effectively and economically;
- (b) ensure that the department achieves a satisfactory standard in the delivery of services to the public;
- (c) exercise authority, fairly, rationally and consistent with sound human resource management practices;
- (d) tender advice to the relevant Minister through the Permanent Secretary and to other authorities as appropriate on matters within the department's competence;
- (e) establish performance indicators covering the programmes and activities of the department, and to set performance targets for officers and employees serving in that department;
- (f) coordinate the activities of the department with
 - (i) those of the ministry, where that department is under a ministry, or

- (ii) those of other government ministries or departments in the best interests of economy, efficiency, effectiveness and quality service delivery.

(2) In performing the ~~functions~~ role of a Head of Department, that Head of Department shall

- (a) endeavour to attain performance objectives agreed with the Permanent Secretary of the ministry or department;
- (b) endeavour to achieve Government objectives, in coordination as necessary with other government ministries or departments;
- ~~(c)~~ achieve satisfactory levels of efficiency and quality in the delivery of services to the public;
- ~~(e)~~
- ~~(d)~~ hold general staff meetings at least twice per year to communicate and review the strategic direction, major challenges and the goals and objectives of the department under his or her supervision;
- ~~(d)~~
- (e) comply with the Deputy Governor's instructions, public service standards, Orders of conduct, ethics and any Orders that may be established;
- (f) promote and uphold the values and principles set out in ~~Part~~Chapter IV and applicable policies and directives governing staff conduct, management and the use of resources;
- (g) comply with any other functions, responsibilities and duties imposed on that Head of Department under any other enactment; and
- (h) comply with any lawful directions or instructions given to him or her from time to time by the relevant Minister or Permanent Secretary.

(3) A Head of Department shall be individually responsible in relation to his or her area of responsibility for the matters listed in ~~subsections-paragraphs~~ (1) and (2) and that Head of Department shall be liable to disciplinary proceedings under this ~~Act~~Order, if he or she fails to prevent or correct

misconduct or negligence on the part of his or her subordinates where he or she could reasonably have taken steps to do so.

(4) Nothing in ~~subsection-paragraph~~ (1) shall be read to as to limit the functions and duties of a Head of Department on matters where that Head of Department is required by any other enactment to act independently or in accordance with the direction of a person or authority other than a Minister.

Transfer of
Heads of
Department.

437. (1) Subject to ~~subsection-paragraph~~ (3), on the request of a Permanent Secretary, the Director may recommend to the Governor that a Head of Department be transferred to a vacancy or an impending vacancy in the post of Head of Department

- (a) in that ministry, where that ministry has more than one department under it; or
- (b) to another ministry.

(2) Before making a recommendation under ~~subsection-paragraph~~ (1), the Director shall

- (a) believe on reasonable grounds that the transfer would be in the public interest; and
- (b) obtain the Head of Department's agreement to the transfer; and
- (c) consult the relevant Minister.

(3) A request under ~~subsection-paragraph~~ (1) may be at the instance of the Head of Department and to that end ~~subsection-paragraph~~ (2) shall be read with the necessary modifications.

(4) The Director may make recommendations under this ~~section~~ Order without advertising the vacancy or impending vacancy.

CHAPTERPART IX

ROLE OF THE DIRECTOR OF HUMAN RESOURCES

448. (1) The role of the Director is to provide administrative support and technical advice on human resource matters to the Governor and the Deputy Governor, and to manage the human resources of the service.

Role of the
Director of
Human
Resources.

(2) The Director is responsible for

- (a) the oversight and administration of guidelines, policies and other enactments that may be developed from time to time for the management of human resources in the service;
- (b) the management of officers and employees in accordance with these ~~Act~~ Orders;
- (c) the review of the terms and conditions of service and make recommendations to the Governor in respect of those terms and conditions;
- (d) the implementation of the Governor's decisions in relation to all personnel matters relating to officers and employees;
- (e) the general administrative oversight of the Department of Human Resources, in respect of
 - (i) the classification of posts;
 - (ii) grievances;
 - (iii) salaries and allowances; and
 - (iv) the terms and conditions of employment;
- (f) the industrial inter-relationships with the Public Service Association or other established associations and trade unions;
- (g) the maintenance of those records of officers and employees and an integrated human resources management information system of personnel records that aid in planning and decision-making;
- (h) advising the Governor on the development and maintenance of a system of classification of posts, as well as a pay plan, in the service and ensuring that the system is observed and in fixing the classifications;
- (i) the establishment of policies for the administration of performance management and evaluation of officers and employees;
- (j) the administration of pensions and gratuities and the computation of benefits;

- (k) the promotion of high levels of performance and productivity, setting work standards, developing results-oriented job descriptions and techniques that contribute to high morale, motivation and job satisfaction amongst officers and employees;
- (l) the processing of the recruitment and selection of officers and employees, particularly compliance with the requirements relating to appointments and promotions on merit;
- (m) workforce planning including identifying risks and strategies to minimise risks;
- (n) the appointment of employees into the non-established division and volunteers;
- (o) conducting human resource and training needs assessments, diagnosing constraints and opportunities for development and advancement, establishing areas of priorities based on the findings and take appropriate actions to satisfy those needs and priorities;
- (p) aligning government scholarship programmes to take into account the human resource needs of the service in collaboration with the Ministry of Education and Department of Labour;
- (q) the oversight and administration of human resources budgeting and control;
- (r) fostering and maintaining a work environment within the service that supports the active engagement and involvement of officers and employees;
- (s) ensuring the maintenance of a safe, healthful and productive working environment for officers and employees;
- (t) researching, reviewing and developing human resources policies and guidelines to support the Government's objectives in accordance with legislative requirements and best practices and guidelines; and
- (u) such other matters as may be assigned by the Governor. *Aet*

(3) In carrying out the responsibilities referred to in ~~subsection~~paragraph (2), the Director may, if he or she deems it necessary to do so

- (a) consult
 - (i) the Governor or Deputy Governor;
 - (ii) the Service Commissions;
 - (iii) Permanent Secretaries or Head of Departments;
 - (iv) officers or employees; and
 - (v) the Public Service Association or any other association.
- (b) request information concerning human resource practices from any ministry or department;
- (c) collaborate with Permanent Secretaries and Heads of Department to monitor, assess and evaluate the performance of officers and employees placed within that Permanent Secretary's Ministry or Head of Department's Department responsibility or supervision.

(4) The Director shall endeavour to promote the effectiveness of the service and the personal development of officers and employees

- (a) through the improvement of operational methods and monitoring and controlling their implementation;
- (b) by carrying out staff inspections and reviews and making recommendations for improvements;
- (c) through administering, promoting, encouraging and facilitating in-service and other training programmes, including mentorship programmes;
- (d) by developing and maintaining a quality assurance policy as well as other policies and strategies.

PART CHAPTER X
COMMITTEE OF SENIOR MANAGERS PUBLIC OFFICERS

459. A Committee of Senior Managers Public Officers consisting of the following persons shall execute the functions specified in order 46.

Committee of
Senior
Managers Public
Officers.

- (a) Deputy Governor, chairperson;
- (b) Financial Secretary;
- (c) Permanent Secretaries;
- (d) Cabinet Secretary; and
- (e) Director of Human Resources,

4650. (1) The functions of the Committee are to

Functions of the
Committee.

- (a) provide strategic leadership of the service, to make sure it works as a coherent and effective whole and has the capability both now, and in the future, to respond to any challenges;
- (b) consider the strategic challenges faced by the service, and collectively agree a way forward;
- (c) implement the vision for the service as a whole and solve long-term organisational and cultural challenges including around people and technology;
- (d) ensure government priorities are responded to effectively;
- (e) co-ordinate those functions of the service that relates to the management of the services that cut across ministries or departments to ensure that there exists the capacity of Government to provide a modern and efficient public service and ensure value for money;
- (f) expedite the decision making process particularly in matters requiring the involvement of several ministries or departments;
- (g) facilitate the realisation of performance targets ensuring the achievement of Government policy objectives that cut across ministries or departments;

- (h) generally create a working environment that is conducive to
- (i) increased productivity and greater job satisfaction in the service;
- (j) achieve satisfactory levels of efficiency and quality in the delivery of services to the public.

(2) The Deputy Governor, as soon as practicable, after the end of each financial year, shall submit a report to the Governor outlining the activities of the Committee.

(3) The Committee shall

- (a) meet as often as it deems necessary or expedient for the performance of its functions but not less than once every three months; and
- (b) invite persons and establish sub-committees; and
- (c) regulate its own procedure.

PART-CHAPTER XI

GOVERNMENT MEDIA RELATIONS

Director of
Communication.

4751. (1) The role of the Director of Communication is to provide administrative support and technical advice on media relations and communication matters to the Premier, ministries and departments, and the Director is also responsible for the management of media relations and ensuring the appropriate disclosure of policies, programmes, official activities and achievements of the service to the public.

(2) The functions of the Director of Communication includes the following:

- (a) managing, controlling or supervising, as may be necessary, the ministries and departments, involved in information gathering and dissemination;
- (b) developing and implementing necessary guidelines and mechanisms pertaining to the delivery and dissemination of information relating to the policies, programmes, official activities and achievements of the service;
- (c) coordinating and cultivating relations with the media;

- (d) ensuring consistency in the release of information to the media or the public by formulating guidelines and policies for media and public relations;
- (e) issuing circulars on how media inquiries and how they are to be referred to his or her office, for the response or the provision of an appropriate response to ensure the accuracy and consistency of the response provided to the media and to ensure the service speaks with one voice;
- (f) ensuring consistency in the implementation of the corporate identity of the service;
- (g) developing and enhancing communication plans;
- (h) designing and recommending responses to issues that arise in the service on a daily basis;
- (i) controlling and supervising the conduct of market research and other relevant data as may be necessary; and
- (j) liaising with Archives and Records Management for the proper archiving and retrieval of information.

(3) In carrying out the responsibilities set out in these ~~section~~Orders, the Director of Communication shall take every opportunity to use modern information and communication technology consistent with government policy.

(4) Nothing in this ~~section~~Order shall be construed so as to prohibit the Governor, Premier, Ministers and the Deputy Governor from making or issuing press statements.

4852. A Permanent Secretary or Head of Department shall direct any enquiry from the media on a matter that falls within his or her ministry or department to the Director of Communication, who is the Government's spokesperson.

Inquiries from the media.

~~PART CHAPTER XII~~

ROLE OF DIRECTOR, INFORMATION AND TECHNOLOGY

4953. The role of the Director of Information and Technology is to

- (a) acquire and use information and communication technologies in a manner which

Role of Director of Information and Technology.

- (i) leverages economies of scale to provide for cost effective service;
 - (ii) ensures the interoperability of its information systems with information systems of other ministries, departments or other government entities to enhance internal efficiency or service delivery;
 - (iii) eliminates unnecessary duplication of information and communication technologies in the public administration; and
 - (iv) ensures security of its information and data systems;
- (b) use information and communication technologies to develop and enhance the delivery of its services in public administration;
 - (c) align the use by officers and employees of information and communication technologies to achieve optimal service delivery; and
 - (d) promote the access to public services through the use of information and communication technologies.

PART-CHAPTER XIII

RIGHTS AND DUTIES OF PUBLIC OFFICERS AND EMPLOYEES

Right to legal
representation.

504. (1) The Governor may unless advised otherwise by the Attorney General in any particular case, accept responsibility for the legal representation of officers and employees against whom legal proceedings are threatened or instituted in respect of acts done or liabilities incurred in the execution of the officer's or employee's official duties.

(2) Where any such legal proceedings are threatened or instituted, the fact thereof shall be reported by the officer or employee, through his or her Permanent Secretary or Head of Department, immediately to the Attorney General and no legal or other expenses shall be incurred by the officer or employee against whom the proceedings have been threatened or instituted, or other steps taken in connection with any such proceedings until the directions of the Attorney General have been received by the officer or employee.

Officers or
employees not to
discriminate.

515. (1) In the performance of his or her duties, no officer or employee shall discriminate against another officer or employee or, against a member of the

public and, an officer or employee shall be liable to disciplinary proceedings in accordance with this ~~Act~~Order, for failure to comply with this ~~section~~Order.

(2) For purposes of this ~~section~~Order, the word “discrimination” shall be construed within the context of the Anti-Discrimination Act, 2001.

No. 2 of 2001

526. Officers or employees shall not

Prohibition from communicating with media.

- (a) be editors of any newspaper or directly or indirectly take part in the management of newspapers whether in print or digital;
- (b) contribute to any newspapers or media on questions that can properly be called political or administrative, but may furnish articles upon subjects of general interest;
- (c) make a statement to the media or allow themselves to be interviewed on questions of public policy or any subject that may be regarded as of a political or administrative nature without the prior approval of the Director of Communication through a Permanent Secretary or Head of Department;
- (d) make a statement to the media or allow themselves to be interviewed on questions on matters affecting the security or other international relations of the Territory without the prior approval of the Governor;
- (e) publicly speculate about events, incidents, issues, or future policy decisions or discuss with unauthorised persons advice given to a Minister or Cabinet;
- (f) make public or communicate to the media or cause to be made public or to be communicated to the media or to unauthorised persons, any documents, papers or information which may come into their possession in their official capacity or make private copies of those documents;
- (g) disclose or produce in evidence any official document of a confidential character in any court without obtaining the prior permission of the Permanent Secretary of the ministry or Head of Department concerned or the Governor except in criminal proceedings where compelled to do so,

and, an officer or employee shall be liable to disciplinary proceedings in accordance with this ~~Act~~Order, for failure to comply with this ~~section~~Order.

Freedom of
association.
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537. (1) ~~Subject to~~ In accordance with section 24 of the Constitution^{AS201}, and section 28 of the Labour Code every officer and every employee has the right to freedom of association, including the right to form and join a trade union of his or her choice ~~save that, in the public interest, an officer or employee who is employed in services essential to the safety, health, national security or public order of the Virgin Islands shall not be permitted to engage in industrial action.~~

(2) For purposes of this ~~section~~Order,

- (a) “essential services^{AS21}” includes the Police Service, Prison Service, Water and Sewerage Services, Fire and Rescue Services, Immigration, Customs, Waste Management Services, Public Works Services, Post Office Services;
- (b) “industrial action” means any action including strikes and lockouts, and any action, including sympathy strikes and secondary boycotts by an officer or employer or a trade union or other organisation or by any number of officers or employees to compel an employer to agree to terms of employment or to comply with any demands made by the trade union or other organisation or by those officers or employees, and includes action commonly known as a "sit-down strike", a “go-slow” or a "sick-out", except that the expression does not include a failure to commence work or a refusal to continue working by reason of the fact that unusual circumstances have arisen which are hazardous or injurious to health or life.

Safety in the
workplace.
No. 4 of 2010

584. (1) ~~Subject to the provisions of Part IX of the Labour Code,~~ every person employed in the service has a right to safe and healthy conditions at work and may take reasonable steps to safeguard that right, including the refusal to work in conditions which present imminent danger to their person, health, safety or life or to the health, safety, or life of other persons.

(2) For the purpose of maintaining a safe workplace that is free from substance or alcohol abuse, an officer or employee may be subject to a medical examination which may include a drug test, in order to ascertain whether he or she continues to be physically or mentally fit to perform the duties of his or her post.

(3) An officer or employee who is required to undergo a medical examination shall submit himself or herself to be examined at such time and place as directed by the Director.

(4) Where an officer or employee refuses to undergo medical examination as required under this ~~Act~~Order, the officer or employee shall be liable to disciplinary procedures in accordance with this ~~Act~~Order.

(5) Upon examination and consideration of the medical report, the Director or the relevant Commission, as the case may be, shall inform the officer or employee as soon as practicable, of the decision.

559. (1) Every officer or employee has a right to a work environment free from sexual harassment and, an officer or employee may file a grievance alleging sexual harassment in accordance with the procedure that is set out in Schedule 5 with respect to grievance handling.

Sexual
harassment.
Schedule 5

(2) Permanent Secretaries or Heads of Department shall make every reasonable effort to ensure that no officer or employee is subjected to sexual harassment.

(3) The Director shall, after consulting with the officers or employees or their representatives, if any, issue guidelines concerning sexual harassment.

(4) The guidelines required by ~~subsection~~paragraph (3) may contain any term consistent with the tenor of this ~~section~~Order the Director considers appropriate but shall contain the following:

- (a) a definition of sexual harassment that is substantially the same as the definition in this ~~section~~Order;
- (b) a statement to the effect that every officer or employee is entitled to a work environment free of sexual harassment;
- (c) a statement to the effect that the service will make every reasonable effort to ensure that no officer or employee is subjected to sexual harassment;
- (d) a statement to the effect that the service will take such disciplinary measures as the service deems appropriate to curb the incidences of sexual harassment against any officer or employee;

- (e) a statement explaining how complaints of sexual harassment may be brought to the attention of the Director or relevant Commission;
- (f) a statement to the effect that the service will not disclose the name of a complainant or the circumstances related to the complaint to any person except where disclosure is necessary for the purposes of investigating the complaint or taking disciplinary measures in relation thereto.

(5) Every Permanent Secretary or Head of Department shall make each officer or employee, in his or her ministry or department, aware of the guidelines on sexual harassment required by ~~subsection~~paragraph (3).

(6) In this ~~section~~Order, sexual harassment means any conduct, comment, gesture or contact of a sexual nature

- (a) that is likely to cause offence or humiliation to any officer or employee; or
- (b) that might, on reasonable grounds, be perceived by that an officer or employee as placing a condition of a sexual nature on employment or on any opportunity for training or promotion.

Right of officers or employees respecting elections.

~~5660.~~ (1) ~~Subject to ~~subsection~~paragraph (2), nothing in this ~~Act~~Order, or any regulations made there under, prohibits an officer or employee from seeking a nomination as or being a candidate or supporting a candidate or political party in a general election or by election, and if elected, from serving as an elected representative in that office.~~

(2) Officers or employees wishing to contest a seat for general election ~~or by-election~~ shall resign or retire from the service prior to nomination day.

(3) No person who

- (a) is in a supervisory capacity over an officer or employee in the service; or
- (b) is authorised to employ, promote or reclassify a person in the service,

shall coerce or intimidate that officer or employee into supporting or not supporting a candidate or a political party.

(4) An officer or employee shall not solicit funds for or on behalf of a political party or candidate.

5761. (1) An officer or employee who resigns or retires from the service in order to become a candidate for election and who fails to be elected, may be re-appointed to the service if a vacancy exists and in the same manner as other persons are appointed to the service.

Reinstatement of unsuccessful candidate.

(2) An officer or employee re-appointed under **subsection paragraph** (1) shall be deemed to have continued in the service as if he or she had not resigned or retired where he or she is re-employed in the service within a period of 5 years but, the period during which the officer's or employee's service was interrupted by the resignation cannot be taken into account for working out their total period of service.

6582. (1) Except with the written permission of the Deputy Governor which permission may at any time be withdrawn, an officer or employee shall not accept or engage in any employment for reward other than in connection with the functions of his or her office in the service.

Outside employment prohibited.

(2) For the purposes of **subsection paragraph** (1) the Deputy Governor shall take into account whether or not the outside employment

(a) could reasonably be expected to interfere with or impede the effective or efficient performance of the officer's or employee's functions in the ministry or department;

(b) ~~would constitute a contravention of the Code of Conduct and Ethics referred to in **section** Order 204;~~

(c) is prohibited by any other enactment; or

(d) would bring the service into disrepute.

(3) The Deputy Governor shall decide whether or not to grant permission, pursuant to **subsection paragraph** (1), within 30 days after the receipt of the request from the officer or employee in question.

(4) Outside employment, where approved, is to be performed wholly during the officer's or employee's private time.

(5) An officer or employee may engage in part-time employment or voluntary work which does not conflict or interfere with the performance of his or her official duties, and provided they obtained permission from the Deputy Governor through the Director.

Disallowable
decisions.

5963. An officer or employee shall not make decisions nor participate in decision-making which affects the financial or other interests of

- (a) his or her spouse or a person living with that officer or employee as if they were married to each other, child or parent or other person of family ties;
- (b) individuals or legal persons with whom he or she has had formal or business contacts within the past 2 years;
- (c) individuals or legal persons who have financed his or her election campaign within the past 5 years;
- (d) companies, institutions or other legal persons in which the officer or employee intends to seek employment;
- (e) associations or legal persons in which he or she holds the post of administrator or membership in the board of directors;
- (f) an individual or legal person for which the officer or employee is an official representative, legal representative or bankruptcy trustee; or
- (g) an individual or legal person with whom the officer or employee, his or her spouse or a person living with that officer or employee as if they were married to each other, child or parent or other person of family ties is involved in a lawsuit or to whom they are indebted.

Grievance
handling.

604. (1) An officer or employee may file a grievance

- (a) arising from an administrative act, omission, or disciplinary action;
- (b) arising from an alleged denial of a right to which he or she is justifiably entitled to under this ~~Act~~ Order or generally out of the employment relationship; or
- (c) seeking redress for any matter for which an officer or employee may properly seek redress for under this ~~Act~~ Order.

(2) A grievance may allege

- (a) a denial of a right to which the officer or employee is justifiably entitled to;
- (b) that the officer or employee has not been treated fairly; or
- (c) any other allegation which the officer or employee may properly make in the circumstances.

(3) An officer or employee may file a grievance in accordance with the procedure with respect to grievance handling that is set out in Schedule 5.

Schedule 5

615. (1) Where an officer or employee has a reason to believe that the conduct by another officer or employee is unethical or improper that officer or employee is required to report either the alleged unethical or the improper conduct, to the Permanent Secretary or Head of Department forthwith.

Obligation to report unethical or improper conduct.

(2) Where a report concerns alleged unethical or otherwise improper conduct on the part of a Permanent Secretary or Head of Department it shall be made to the Deputy Governor.

(3) Nothing in this ~~section~~ Order prevents the making of a report of alleged criminal conduct directly to the police.

626. (1) An officer or employee shall report to the Permanent Secretary or Head of Department any reasonable suspicion of a criminal act by another officer or employee of which he or she is or becomes aware and, the Permanent Secretary or Head of Department shall act on it in accordance with ~~section~~ Order 67.

Reporting matters of a criminal nature.

(2) An officer or employee who believes that he or she is being required to act in a way that

- (a) is illegal, improper, or unethical;
- (b) is in breach of an accepted convention or a professional Order;
- (c) may involve possible maladministration; or
- (d) is otherwise inconsistent with the Code of Conduct and Ethics and or with the Public Service Values and Principles set out in this ~~Act~~ Order,

shall report the matter to the Permanent Secretary or Head of Department.

(3) An officer who becomes aware of any breach of the obligations laid down under this ~~Chapter~~**Part** shall report the matter to the Permanent Secretary or Head of Department forthwith.

(4) Where a report concerns alleged criminal activity on the part of a Permanent Secretary or Head of Department it shall be made to the Deputy Governor who shall act on it in accordance with ~~section~~**Order 67**.

Action on report.

637. (1) Where the Deputy Governor, a Permanent Secretary or Head of Department receives a report pursuant to ~~section~~**Order 65** he or she shall investigate the matter and

- (a) if satisfied that there is evidence of unethical or improper conduct, report the matter to the relevant Commission; or
- (b) in any other case, take such action as he or she considers appropriate,

and shall notify the officer or employee who made the report of the actions taken in relation to the report.

(2) Where the Deputy Governor, Permanent Secretary or Head of Department receives a report pursuant to ~~section~~**Order 66** he or she shall report the matter to the police for investigation and may additionally report to any other authority he or she considers appropriate and shall notify the officer or employee who made the report of the actions taken in relation to the report.

Duty to give honest and impartial advice.

648. An officer or employee shall

- (a) give honest and impartial advice to a Minister, Permanent Secretaries or Heads of Department, as the case may be, and make all information that is relevant to a decision, available to them; and
- (b) conscientiously perform their duties and obligations and assist in carrying out the lawful policies of the Government;
- (c) not deceive or knowingly mislead any other person.

~~PART~~CHAPTER XIV****

OFFICES AND CATEGORIES OF EMPLOYMENT

659. (1) In accordance with section 42 of the Constitution, the Governor^[AS22] ~~may~~ **is empowered to**

Establishment and abolition of offices.
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- (a) establish offices in the service and distinguish
 - (i) between established and non-established offices; and
 - (ii) part-time and full-time offices;
- (b) determine the number of persons who may be appointed to those offices;
- (c) prescribe the qualifications for, and the duties of those offices;
- (d) determine the emoluments to be attached to those offices;
- (e) raise or lower the classification of offices;
- (f) abolish offices; and
- ~~(g)~~ alter the designation or transfer offices from one ministry or department to another ministry or department.

6670. (1) The ~~Director shall establish~~^[AS23], ~~maintain, and implement one or more classification plans for posts~~

Classification of posts.

- ~~(a) as a basis for the uniform treatment of officers and employees performing the same kind or level of work and responsibilities;~~
- ~~(b) to provide a uniform basis for the administration of pay, so that the same or like qualifications may reasonably be required for and, the same pay may reasonably be applied; and~~
- ~~(c) to establish the eligibility requirements for appointments to each grade including, where applicable, rules of progression to all posts in the same class.~~

~~(2) In order to develop a classification plan of posts, the Director may request a Permanent Secretary or Head of Department to define the duties and responsibilities to be assigned to each post in a ministry or department under the jurisdiction of that Permanent Secretary or Head of Department.~~

(3) — ~~The Director shall determine the grade of a post on the basis of~~

(a) — ~~minimum requirements;~~

(b) — ~~work complexity and responsibility;~~

~~and all posts within the same classification shall be assigned to the same grade.~~

(4) — ~~No person in any classification may be paid a remuneration which is less than that applicable to that classification.~~

(5) — ~~The Governor shall approve the classification of each post and the classification shall not be altered for the purpose of adjusting rates of compensation for an officer or employee.~~

Reclassification
of post.

671. (1) — ~~A post may be reclassified as a result of a reallocation of duties and responsibilities of that post, the use of new technology, or the reorganisation of the ministry or department and the reclassification of a post may be carried out on the~~

(a) — ~~request of a Permanent Secretary or Head of Department;~~

(b) — ~~initiative of the Director.~~

(2) — ~~Where as a result of reallocation of duties and responsibilities a post is reclassified to a class having a higher maximum salary and, if in the opinion of the Director, the incumbent of the post has the necessary qualifications and the Permanent Secretary or Head of Department is able to demonstrate that the incumbent satisfactorily performs the duties of the post, the Director may recommend the promotion of the incumbent, without competition, to the relevant Commission, to the post as reclassified.~~

(3) — ~~Where, as a result of a reallocation of duties and responsibilities a post is reclassified to a class having a lower maximum salary a Permanent Secretary or Head of Department, in consultation with the Director, shall take such steps as are practicable to secure that the officer or employee remains at the existing salary.~~

6872. (1) The categories of employment in the service consists of the established division and the non-established division.

Categories of
employment.

(2) The established division is comprised of full-time or part-time permanent posts existing or created after the commencement of this **Act** Order and to which officers are appointed on

- (a) pensionable terms being full-time employment for an unspecified period of time whose conditions of service attract the earning of a pension;
- (b) probationary terms being full-time employment for an officer who has not yet completed the probationary period and who upon completion will be employed on pensionable terms;
- (c) provisional terms being full-time employment of an officer who does not meet the minimum requirements for full-time appointment;
- (d) contract terms being full-time employment for a specified period not less than 12 months.

(3) The non-established division consists of full-time or part-time non-permanent posts existing or created after the commencement of this ~~Aet~~ Order and consists of the following description of employees holding posts which are not pensionable:

- (a) “temporary employee” being an employee engaged to perform specific duties because of a temporary increase in the work load for a specified period or a needs basis;
- (b) “relief employee” being an employee engaged to fill a post on a temporary basis as replacement for the regular incumbent;
- (c) “student employee” being a person employed who has been in full-time attendance as a student at an educational institution and affirms at the time of his or her appointment that he or she will return to full-time attendance at an educational institution in the same year;
- (d) “cadet employee” being a person employed under the Cadet Programme;
- (e) “special advisor” being a person employed to perform specific duties for a minister including private secretaries to ministers; ~~and section 10 shall apply with respect to their appointments;~~
- (f) “volunteer” means a person offering his or her services wholly or primarily for reward other than remuneration.

(4) Unless the exigencies of the service otherwise dictates, as far as practicable, the service shall seek to employ persons on pensionable terms.

(5) A person who is an independent contractor is not an officer or employee of the service.

Administration
of contracts.

6973. The Director shall, on behalf of the Government, administer contracts of employment made and any amendment to be made to a contract of employment shall be authorised by the Director.

Deployment.

704. (1) When accepting a post in the service, officers and employees shall recognise that accepting an appointment in the service is not limited to a particular post, ministry or department and that in order to achieve flexibility to better utilise its resources to meet its objectives the service reserves the right. to itself, to deploy officers and employees according to [AS24] the exigencies of the service.

(2) The authority for the deployment of officers or employees is vested in the Director who shall consult with the Permanent Secretary or Head of Department to be affected by the deployment.

(3) An officer or employee may be assigned to different posts of equivalent grade within the service according to the operational needs of the service and, in so doing, the Director may take into account

- (a) the preferences of officers or employees, wherever practicable;
- (b) the skills and abilities of an officer or employee.

(4) A deployment of an officer or employee under this ~~section~~ Order does not constitute a breach of the person's contract of employment or termination of the person's employment, or affect the continuity of the person's employment for any purpose.

(5) An officer or employee who objects to a deployment may follow the grievance procedure under this ~~Act~~ Order.

(6) For the purpose of ~~subsection~~ **paragraph** (1), where the exigencies of the service require, the Director shall provide details to the officer or employee, of the circumstances impacting the exigencies of the service.

(7) Where the exigencies of the service require the deployment of a Head of Department, the Director who shall consult with the Deputy Governor before effecting the deployment of that Head of Department.

715. (1) Where an officer is employed on contract for a fixed term and that contract is renewed in aggregate, for a period of five years, that officer is to be employed on pensionable terms, if, due to the exigencies of the service, the continuity of that officer's employment is desirable.

Conversion of contract officer to pensionable.

(2) For the purposes of ~~subsection~~paragraph (1), the officer is to be employed

- (a) at the classification level at which the officer would have been employed if the officer had been employed on pensionable terms; and
- (b) on the remuneration to which the officer would have been entitled if the officer had been employed on pensionable terms.

(3) If an officer on contract accepts employment on pensionable terms, the contract is taken to be terminated by agreement of the parties and the period served on contract shall be taken as continuity of service for purposes of the pensions law.

(4) This ~~section~~ Order does not apply to persons who are re-engaged in the service on fixed term contracts after retirement.

PART-CHAPTER XV

RECRUITMENT AND APPOINTMENTS

726. (1) A Permanent Secretary or Head of Department is responsible for knowing the staffing complement needed to efficiently, effectively and economically carry out the mandate of his or her ministry or department and any staffing needs should be notified to the Director^[AS25].

Notification of vacancy.

(2) As soon as it is known that a vacancy will occur in a ministry or department, a Permanent Secretary or Head of Department shall report the vacancy to the ~~Director~~ **Human Resources Department**.

(3) Where a vacancy exists for more than three months and no request has been made by the Permanent Secretary or Head of Department for the filling of that vacancy, the Director shall send to that Permanent Secretary or Head of Department a statement of existing vacancies within the ministry or department requesting early recommendations for the filling of those vacancies.

(4) Where a Permanent Secretary or Head of Department fails, without an explanation, to make recommendations pursuant to ~~subsection~~paragraph (3), the Director shall report that failure to the Governor and the Governor, on the

advice of the Director, shall make a determination as to whether to abolish the office or alter its designation or transfer it from one ministry or department to another ministry or department.

Advertisement of
vacancy.

737. (1) The Director may, whether in or outside the Territory issue an advertisement, inviting persons to apply for appointment, promotion or transfer to a vacant office in the service.

(2) An advertisement under ~~subsection~~paragraph (1) may be published

- (a) in the Territory, in the *Gazette* or newspaper of general circulation or by any other means;
- (b) outside the Territory, in a newspaper of general circulation or by any other means.

(3) The Director shall specify in the advertisement

- (a) the office or class of offices in respect of which applications for appointment are invited;
- (b) the qualifications, competencies, experience and personal qualities required;
- (c) the remuneration that will be applicable on appointment;
- (d) where applicable the age limits for appointment;
- (e) the date by which applications are required to be made;
- (f) such other matters, not inconsistent with this ~~Act~~Order, as the Director thinks desirable.

(4) Subject to ~~subsection~~paragraph (5), a Permanent Secretary or Head of Department shall not request for the advertisement against an office in his or her ministry or department which has a substantive office holder.

(5) Where the substantive office holder vacates the office for leave or for any other reason however arising, a Permanent Secretary or Head of Department may recommend that an acting appointment be made to the office for the duration of the absence of the substantive office holder.

(6) Where the exigencies of the service require, the filling of a vacancy in the service may be made without advertising the vacancy or impending vacancy.

748. (1) The minimum age of recruitment of persons into the service is 18 years, and, except where otherwise specified, the maximum age of recruitment or re-employment of officers or employees shall be 55 years. Age of recruitment.

(2) Notwithstanding ~~subsectionparagraph~~ (1), but subject to ~~subsectionparagraph~~ (3), persons over the age of 55 years may be recruited on contract for specialised work.

(3) Except as provided under ~~subsectionparagraph~~ (4), a person who has attained the age of 65 years shall not be recruited to the service.

(4) A person who retires from the service, upon attaining retirement age, may be re-engaged in the service in accordance with the pensions law.

(5) For the removal of doubt, this ~~section~~Order does not apply to a student employee or a volunteer.

759. (1) An applicant who responds to a vacancy advertised ~~in accordance with section~~Order 77 shall Application to a vacancy.

- (a) submit an application and all supporting documentation to the Director or relevant Commission;
- (b) meet the minimum qualifications specified for that post;
- (c) undergo a medical examination pursuant ~~section~~ Order 80;
- ~~(d) submit a police clearance certificate;~~
- (e) submit any other requirements relevant to the post that may be specified in the vacancy notice or job description.

(2) Unless otherwise provided in this ~~Act~~Order, no person shall be appointed on pensionable terms, to any post in the established division unless he or she

- (a) is a person who belongs to the Virgin Islands in accordance with section 2(2) of the Virgin Islands Constitution Order, 2007 or a permanent resident; and S.I. 2007 No. 1678
- (b) is a fit and proper person.

(3) Notwithstanding ~~subsectionparagraph~~ (2), if extensive recruitment activities do not yield a suitably qualified belonger or a permanent resident, then other persons may be considered for employment on contractual terms to fill the vacancy.

(4) Unless otherwise provided in this ~~Act~~Order, a person dismissed from the service due to

- (a) gross misconduct relative to his or her official duties;
- (b) conviction for a criminal offence with a sentence of imprisonment,

is barred from appointment in the service for a period of five years following the dismissal.

(5) A person

- (a) against whom criminal proceedings are pending; or
- (b) who left from the service due to ill health and fails to provide recent and conclusive evidence of recovery,

shall not apply for employment or re-engagement in the service.

(6) For purposes of this ~~section~~Order “supporting documentation” includes but is not limited to, certified copies of certificates of degrees or academic achievements, police clearance certificate, certified copy of photo identification, photo page of passport, character or other reference letters.

(7) Where more than one of the candidates for a post have met the minimum requirements required for the post, in selecting the person to be appointed to the post, and subject to due consideration of the interests of the public and the requirements of the service, preference shall be given to any person who belongs to the Virgin Islands as defined in section 2(2) of the Constitution.

(8) The relevant Commission shall consider only those applicants who have met the minimum requirements based upon all relevant supporting documentation and the medical certificate referred to in ~~section~~Order 80.

7680. (1) As a condition of employment in the service a person applying for employment, whether he or she is within the Territory or is outside the Territory, shall be required to undergo

- (a) a medical examination^[AS27], which may include drug testing, for use of any substance classified as controlled drugs under the Drug (Prevention of Misuse) Act or for the misuse of alcohol or prescription drugs;
- (b) a physical examination;

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Medical
Examination.

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- (c) a mental examination; or
- (d) all or any combination of the examinations referred to in paragraphs (a) to (c),

in order to establish whether he or she is medically, physically or mentally fit for employment in the post and that person's examination report shall be taken into consideration in that regard.

(2) The Director shall provide to the applicant a medical form to be used for purposes of ~~subsection~~paragraph (1), which shall, once completed and, signed by a medical practitioner, be deemed to be a medical certificate.

(3) A medical practitioner carrying out the examination shall attest to the fitness of that person, and any potential physical, mental or medical limitations with respect to the job functions and responsibilities and may classify the person as

- (a) having no limitations, meaning the person is physically, mentally or medically capable of performing the full range of duties of the post; or
- (b) having limitations, meaning the person has physical, mental or medical limitations that may adversely affect the person's suitability for the post.

(4) For purposes of this ~~section~~Order, "medical practitioner"

- (a) in the case of a candidate recruited within the Territory, means a person registered as such under the Medical Act, No. 4 of 2000; 2000;
- (b) in any other case, means a person registered as a medical practitioner under the laws of the country or Territory where the candidate resides.

(5) The information obtained under this ~~section~~Order shall not be used for any purpose other than assessing the candidate's suitability for employment in the service.

(6) A candidate who submits to the Director or relevant Commission information under this ~~section~~Order that is false, misleading or incomplete in a material particular shall be summarily dismissed and where he or she was recruited from outside of the Territory, shall reimburse the Government the

amount paid for his or her passage to the Territory and for the passage of any member or members of his or her family.

Assessment of
suitability using
police certificate.

7781. (1) A person's police clearance certificate shall be used to assess his or her suitability for appointment to the service.

(2) Subject to ~~subsection~~ **paragraph** (3), an applicant with a criminal record may be considered for appointment to the service.

(3) An applicant who has a criminal record shall not be employed in the service where

- (a) because of the nature of the particular duties, it may be necessary to have regard to the criminal history of anyone engaged to perform the duties to ensure the person so engaged is suitable to perform them; and
- (b) the duties
 - (i) are to be performed at a place at which services are provided only or mainly to a vulnerable group;
 - (ii) are to be performed in a role involving providing services only or mainly to a vulnerable group; or
 - (iii) involve contact with a vulnerable group that is of a kind, or happens in a context, that may create an unacceptable level of risk for the vulnerable group.

(4) For purposes of this ~~section~~ **Order**, "vulnerable group" includes children, mentally or physically handicapped persons and the elderly and "child" means any person under the age of 18.

Persons already
in service to
disclose change
in criminal
history.

7882. (1) ~~This section~~ **Order** ~~applies~~ if there is a change in the criminal history of an officer or employee in the service.

(2) The officer or employee shall immediately disclose the details of the change in the criminal history to the Director or relevant Commission and the disclosure shall be in the approved form and shall include

- (a) the existence, whether in the Territory or outside the Territory, of the conviction or charge;
- (b) when the offence was committed or alleged to have been committed;
- (c) the details of the offence or alleged offence; and

- (d) for a conviction, whether or not a conviction was recorded and the sentence imposed on the person.

(3) For an officer or employee who does not have a criminal history, there is taken to be a change in the person's criminal history if the officer or employee acquires a criminal history.

(4) An officer or employee shall not

- (a) fail to give the Director or relevant Commission a disclosure required under ~~subsection~~paragraph (3), unless the officer or employee has a reasonable excuse; or
- (b) give the Director or relevant Commission information under ~~subsection~~paragraph (3) that is false, misleading or incomplete in a material particular.

(5) The information obtained under this ~~section~~Order shall not be used for any purpose other than assessing the officer's or employee's suitability to continue to be engaged in the service and in making that assessment the Director or relevant Commission, shall have regard to the following:

- (a) when the offence was committed, is alleged to have been committed or may possibly have been committed;
- (b) the nature of the offence and its relevance to the person's duties; and
- (c) anything else the Director or relevant Commission considers relevant to the assessment of the officer or employee.

(6) An officer or employee who fails to comply with the provisions of this ~~section~~Order shall be liable to disciplinary proceedings in accordance with this ~~Act~~Order.

7983. (1) The selection of applicants for appointment to the service shall be carried out in accordance with Part III of the Service Commissions Act, 2011.

Selection for
appointment.
No. 8 of 2011

(2) The Secretariat or Secretary shall inform in writing applicants of the outcome of their applications or selection process.

8084. (1) Where any person is appointed to the service, otherwise than on promotion, the person shall first serve a probationary period ~~[AS28]~~not exceeding 1 year with performance assessment being done in the first 6 months.

Probation.

(2) Where an officer or employee is appointed on promotion^[AS29], the person shall first serve an initial probationary period of 3 months, which may where necessary, be extended for a further period not exceeding 3 months.

(3) Before the expiry of a probationary period, a Permanent Secretary or Head of Department shall submit a report together with his or her recommendation on the performance of the officer or employee to the Director or relevant Commission who or which shall consider whether

- (a) the officer or employee should be confirmed in the post;
- (b) the officer's or employee's performance being otherwise satisfactory, the probationary period should be extended so as to afford the officer or employee further opportunity to pass any examinations which are a condition precedent to confirmation to the post;
- (c) the probationary period should be extended to afford the officer or employee the opportunity of improvement in any respect in which the officer's or employee's work or conduct has been unsatisfactory; or
- (d) the employment of the officer or employee should be terminated or in the case of a promotion, the officer or employee should be reverted to the post he or she previously held before the promotion,

and submit his or her or its recommendation to the Governor.

- (4) Employment during the probationary period, may be terminated by
 - (a) the Government giving the officer or employee one month's notice, in writing; or
 - (b) the officer or employee giving the Government one month's notice, in writing.

(5) Where employment is terminated during a probationary period, it shall be considered to have been terminated for just cause and the extension of a period of a probationary appointment shall not be considered as dismissal from the service.

(6) The Governor on the advice of the Director or relevant Commission, may upon the promotion of an officer or employee, reduce a

probationary period if the officer or employee has fulfilled all the requirements necessary for confirmation to the post and either

- (a) the officer or employee has previously acted in that post or in a similar post in another ministry or department; or
- (b) the reduction of the probationary period is necessary for administrative reasons,

but, no probationary period shall be reduced by a period exceeding the period which the officer or employee concerned has previously acted in the post or a similar post in another ministry or department.

(7) If, at the end of a probationary period, an officer or employee on probation is not informed in writing of the outcome of his or her performance, he or she shall be deemed to be confirmed in the post from the date of the first day following the expiry of the probationary period.

Principles to be
observed during
probation.

815. The following principles shall be observed for the treatment of officers and employees during a period of probation:

- (a) an officer or employee shall be given an opportunity to learn the work and be assessed and informed on his or her performance or progress;
- (b) an officer or employee shall be afforded all possible facilities for acquiring experience in his or her duties;
- (c) an officer or employee shall be subject to continual, effective and considerate supervision;
- (d) so far as the exigencies of the service permit, an officer or employee shall be assigned to duty only where such observation is possible;
- (e) be informed in writing of any tendencies identified which renders confirmation of appointment to post, doubtful;
- (f) be offered assistance to correct the tendencies identified under paragraph (e);
- (g) be informed of disciplinary proceedings under ~~Part~~Chapter XXI which is also applicable during the probationary period.

Acting
appointments.

826. (1) An acting appointment [AS30] shall not be regarded as automatic on the occurrence of any vacancy and it will not always be necessary to make such an acting appointment to a higher post, duties whereof can be distributed amongst other officers or employees of a particular grade in the ministry or department concerned.

(2) Where an officer or employee substitutes in a higher level post during the absence of the regular incumbent, the Governor on the advice of a relevant Commission may appoint the officer or employee to act in the higher level post if that officer or employee is considered qualified for the post.

(3) A Permanent Secretary or Head of Department shall submit in advance recommendations for an acting appointment to permit their consideration by the relevant Commission before the dates on which the acting appointments are intended to become effective, but this provision shall not apply where the necessity to submit recommendations has been occasioned by sudden illness or other circumstances which the relevant Commission shall consider appropriate.

Principles for
selection for an
acting
appointment as a
prelude etc.
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837. The Director, Permanent Secretary or Head of Department shall ensure that any recommendations made in relation to an acting appointment as a prelude to a substantive appointment are based on the principles specified in section 17 of the Service Commissions Act, 2011.

Principles for
promotion.

84.8. (1) Subject to ~~section~~ Order 23, promotions in all cases shall be based on merit and ability, taking into account the experience, formal qualifications and seniority in the service, of the candidates for the appointment.

(2) The provisions of ~~section~~ Order 85 shall apply to an officer or employee serving a probationary period on promotion.

(3) The effective date of promotion of an officer or employee shall be notified in writing to that officer or employee and shall not be earlier than the date upon which

- (a) the vacancy occurred;
- (b) the Governor authorises, in writing, the promotion of an officer or employee; or
- (c) the officer or employee assumed the functions of the office.

(4) Where an officer or employee is promoted from one ministry or department to another, a Permanent Secretary or Head of Department shall take

immediate steps to ensure the release of such officer or employee to assume duties in his or her new office.

859. (1) Subject to ~~subsection~~paragraph (3), an officer or employee may be transferred Transfers.

(a) within a ministry or department; or

(b) to another ministry or department.

(2) An officer or employee may be transferred under subsection~~paragraph~~ (1) ^[AS31]only if

(a) the officer or employee requests the transfer or consents to the transfer; or

(b) in the absence of such request or consent, after due consideration of any representations by the officer or employee, the transfer is in the public interest.

(3) Where the transfer of an officer or employee is as a result of

(a) the transfer of any function from a ministry or department to another ministry or department; or

(b) the abolition of any function of a ministry or department,

that officer or employee may not upon the transfer suffer any reduction in remuneration and other conditions of service.

(4) An officer or employee who has been transferred to a post with

(a) a lower salary than his or her salary before the transfer shall not upon such transfer suffer any reduction in salary, except if he or she requested the transfer or he or she consented to the reduction; or

(b) a higher salary than his or her salary before the transfer shall not by reason only of that transfer be entitled to the higher salary.

(5) A transfer of an officer or employee under this Act~~Order~~, does not constitute a breach of the officer's or employee's contract of employment or termination of his or her employment, or affect the continuity of his or her employment in the service for any purpose.

(6) Where an officer or employee is transferred, a Permanent Secretary or Head of Department shall take immediate steps to ensure the release of such officer or employee to assume duties in his or her new office.

Secondments.

8690. (1) The authority for the **approval of secondment** [AS32] is vested in the Governor and for the purpose of this **section** Order, a secondment is the release of an officer from the service to a statutory body, organisation or project outside of the service.

(2) The Director may issue guidelines providing for any of the following about the secondment of officers under this **section** Order:

- (a) the circumstances in which an officer may be seconded;
- (b) the terms that may apply to a secondment;
- (c) administrative arrangements that may apply to a secondment, including the determination of the applicable rate;
- (d) any other matters the Director considers relevant to a secondment.

(3) ~~For the removal of doubt this **section** Order does not apply to employees.~~

Time limits on secondments.

8791. (1) An officer may be seconded for a period of up to two years, unless there is exceptional circumstance for extension of secondment for a period not exceeding three years and the approval of secondment shall be contingent on the exigencies of the service.

(2) For the purpose of **subsection paragraph** (1), where the exigencies of the service require, the Permanent Secretary or Head of Department shall provide for the consideration of the Governor details of the circumstances impacting the exigencies of the service to determine whether the secondment should be approved.

(3) Where an officer remains on secondment for a period in excess of the period specified in **subsection paragraph** (1), that officer shall be required to exercise the option of remaining in the service of the statutory body, organisation or project to which he or she is seconded or of returning to his or her substantive post in the service.

(4) For the avoidance of doubt, the continuity of service of the officer for purposes of the pensions law shall not be affected by the period of secondment

of that officer if that officer returns to the service within the period specified in ~~subsection~~paragraph (1).

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(5) An officer on secondment is not eligible for mobility under the Employee Mobility Act.

8892. (1) An officer employed in the service on pensionable terms shall, on the satisfactory completion of a probationary period, be confirmed to the service and shall, from the date of confirmation, become eligible for pension benefits under the pensions law.

Confirmation in the service.

(2) If at the end of a probationary period, an officer employed in the service on pensionable terms is not informed, in writing of the outcome of his or her performance during the probationary period, he or she shall be deemed to be confirmed in the service from the initial date of appointment.

PART-CHAPTER XVI **REMUNERATION**

8993. (1) Subject to the Annual Budget Estimates of the Virgin Islands, remuneration attached to public offices is to be a charge on the Consolidated Fund and approved by the House of Assembly and will be as indicated in the Annual Budget Estimates of the Virgin Islands.

Remuneration charge on Consolidated Fund.

(2) Before a Permanent Secretary or Head of Department makes salary adjustments and advancements he or she shall certify that funds for this purpose are available in the allocation in the annual budget of that ministry or department.

(3) For purposes of this ~~section~~Order, Head of Department shall be read to include an accounting officer where that Head of Department is not the accounting officer.

904. (1) ~~Remuneration in the service shall aim, within fiscal constraints, to support~~

Remuneration.

~~(a) — economical, efficient and effective service delivery and provide appropriate incentives for officers and employees;~~

~~(b) — internal equity by providing equal pay for work of equal value;~~

~~(c) — internal equity by compensating its officers and employees on a general scale which is comparable to the median rate paid by other organisations for similar work in the Territory, provided that sufficient funds are available.~~

(2) ~~Remuneration in the service may be determined after taking into account~~

- ~~(a) available funding;~~
- ~~(b) the results of job evaluation, if available;~~
- ~~(c) the performance of the officer or employee; and~~
- ~~(d) the need to recruit and retain personnel with appropriate competencies.~~

(3) Upon first appointment, the commencing salary to be paid shall be the minimum of the salary range applicable to the office, whether temporary, acting or pensionable, however the commencing salary may be set higher where

- (a) the qualification of the person are in excess of the minimum qualification required of the office;
- (b) there is difficulty in recruiting for the post and persons are unwilling to accept the minimum commencing salary;
- (c) the pertinent experience of the person is above the minimum qualification required of the office.

(4) The right to equal pay for equal work or work of equal value shall be accorded to an officer and employee from the date of his or her appointment.

PART CHAPTER XVII

PERFORMANCE MANAGEMENT

Principles of
Performance
Management
Programme.

962. Permanent Secretaries and Heads of Department shall manage performance in a consultative, supportive and non-discriminatory manner in order to enhance organisational efficiency, effectiveness and accountability for the use of resources and the achievement of results and to that end shall ensure that

- (a) performance management processes link to broad and consistent plans for staff development and align with the ministry or department's strategic goals;
- (b) the primary orientation of performance management is developmental whilst allowing for effective response to consistent unsatisfactory performance and for recognising excellent performance;

- (c) performance management procedures minimise administrative burden on supervisors while maintaining transparency and good governance.

937. (1) The purpose of the Performance Management System is to assist in achieving strategic goals and objectives of the service and shall, where appropriate, be used Purpose of evaluation.

- (a) in determining the need for the further development of officers or employees;
- (b) in recognising or rewarding excellent performance;
- (c) in determining salary increases or decreases;
- (d) as a basis for the promotion, transfer, demotion, discipline or dismissal of an officer or employee;
- (e) as basis for identifying unsatisfactory performance so that action may be taken to support the improvement of the performance of that officer or employee;
- (f) in determining the continuation of employment of an officer or employee on probation.

948. (1) Evaluation of the performance and efficiency of officers and employees shall be conducted annually for the preceding calendar year. Performance and efficiency evaluation.

(2) A supervisor shall monitor the performance an officer or employee on a continuous basis and give the officer or employee feedback on his or her performance and if the performance is unsatisfactory the supervisor shall in writing, inform the officer or employee.

959. (1) The procedure for evaluation of the performance management programme of officers and employees shall be conducted in three principal stages Evaluation stages.

- (a) planning of tasks to be performed by an officer or employee, wherein the officer or employee and his or her immediate supervisor mutually ascertain the performance agreement, setting the objectives he or she is expected to achieve;
- (b) supervision of performance and efficiency, wherein the officer or employee and his or her supervisor shall review previous achievements and adjust the performance agreement as needed;

- (c) evaluation of performance and efficiency, wherein the overall work of the officer or employee shall be evaluated by his or her supervisor based on results achieved.

(2) The procedures for the evaluation of performance of officers and employees shall be guided by the policies developed by the Director under ~~section~~ Order 48(2)(i).

(3) An officer or employee who is not satisfied with the outcome of his or her evaluation, may, in writing submit a formal complaint to his or her supervisor, who shall be obliged to examine the complaint together with the officer or employee and in the event of disagreement on the final assessment between the supervisor and the officer or employee, it shall be referred to the Director and shall be further dealt with in accordance with the policies developed by the Director under ~~section~~ Order 48(2)(i).

Incentives for good performance.

~~96100~~. (1) If the departmental budget provides adequate funds, a Permanent Secretary or Head of Department may establish a financial incentive scheme to award officers or employees whose service is outstanding as reported in the performance appraisal report and such an award shall be known as a “Meritorious Award”.

(2) For purposes of this ~~section~~ Order, the Director shall develop policies to determine the nature, rules and control measures of the scheme and to ensure that the scheme is administered equitably.

PART-CHAPTER XVIII **TRAINING AND DEVELOPMENT**

Funding for training.

~~98102~~. (1) Funding for training shall be from moneys appropriated for that purpose by the House of Assembly as indicated in the Annual Budget Estimates of the Virgin Islands.

(2) The Director shall be responsible for the proper administration and management of all monies that are appropriated **to fund training**.

PART-CHAPTER XIX **CATEGORIES OF AND QUALIFICATION FOR LEAVE**

Principles governing leave.

~~99103~~. (1) All leave is granted subject to the exigencies of the ~~service~~^[AS33] and officers and employees are not entitled to leave as a right but, leave is earned ~~in line with policies regarding same~~.

(2) Any leave granted may be cancelled if it becomes necessary that an officer or employee return to duty before the expiry of the leave granted and any unexpired portion of leave may be taken on a subsequent occasion.

(3) Unless otherwise determined by policy regarding same, leave that is earned and not taken, is not eligible for pay-out.

(4) If identical leave requests are submitted that, if approved, would compromise the operational effectiveness and efficiency of the ministry or department and where no other solution is available Permanent Secretaries and Heads of Department shall put in place a rotational system for approving such leave requests.

(5) Leave shall not entail the employment of extra staff except in certain circumstances and Permanent Secretaries and Heads of Department are expected to arrange for the performance of an officer's or employee's duties while he or she is on leave without employing extra staff.

(6) The period regarded as leave shall be computed in working days and will commence from the working day after an officer has handed over his or her duties and end on the working day preceding that on which he or she resumes duty.

(7) Except as otherwise provided in this ~~Act~~Order, a Permanent Secretary or Head of Department is the authority responsible for the approval of leave and he or she is responsible for documenting and recording all leave taken and for managing the leave process ~~in accordance with guidelines issued by the Director.~~

~~100104.~~ (1) The categories of leave in the service are as follows^{AS34}:

Categories of leave.

- (a) annual leave;
- (b) study leave;
- (c) sick leave;
- (d) leave without pay;
- (e) parental leave;
- (f) compensatory leave;
- (g) administrative leave;

- (h) special leave to include leave for contagious diseases and jury duty;
- (i) bereavement leave;
- (j) pre-retirement leave.

PART-CHAPTER XX

MODES OF SEPARATING FROM THE SERVICE

Modes of separating from the service.

1015. (1) The modes by which an officer or employee may separate from the service are as follows:

- (a) abandonment of office;
- (b) separation due to expiry of appointment;
- (c) separation during probation;
- (d) separation due to mobility or secondment;
- (e) on resignation;
- (f) on retirement which may be
 - (i) retirement under the 25 year rule as prescribed under the pensions law;
 - (ii) retirement on the attainment of the mandatory retirement age;
 - (iii) retirement on abolition of office or on re-organisation of a ministry or department;
 - (iv) retirement in the public interest;
 - (v) retirement on medical grounds;
- (g) on dismissal;
- (h) separation due a conviction;
- (i) separation due to death.

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(2) The mode by which the Attorney General, Director of Public Prosecutions and a Magistrate may separate from the service other than by resignation, shall be as specified in section 95(9) of the Constitution.

- 1037.** (1) An officer or employee on separating from the service shall
- (a) return all government property issued to him or her; and
 - (b) honour, or make acceptable arrangement in writing to pay all outstanding debts to Government, if any.

Obligations on separating from the service.

(2) Permanent Secretaries and Heads of Department are responsible for ensuring that steps are taken to recover outstanding debts owed to Government.

(3) An officer or employee on leaving the service may utilise all vacation leave due.

(4) Notwithstanding ~~subsection~~paragraph (3), an officer or employee may request payment in lieu of vacation leave earned which, due to the exigencies of the service, was not utilised by the officer or employee.

(5) Any outstanding debt owing to the Government after deductions from any moneys due to an officer or employee may be recovered

- (a) through written agreement with the Accountant General; or
- (b) through legal action.

PART-CHAPTER XXI

DISCIPLINE OF OFFICERS AND EMPLOYEES

- 1048.** (1) This ~~Part~~Chapter is aimed at ensuring

Purpose.

- (a) that standards of conduct laid down in this ~~Act~~Order, ~~in any regulations~~ or the ~~in the Codes established under section Order 24~~ are complied with;
- (b) that there exists general principles that guide the disciplinary process including
 - (i) procedural fairness;
 - (ii) determining each case on its merits;

- (iii) indicating the factors to be taken into account; and
- (iv) the powers and responsibilities of a person carrying out an investigation in relation to discipline.

Schedule 3

(2) ~~Schedule 3 shall have effect in connection with this Part~~ Chapter.Ultimate
disciplinary
authority.**1059.** (1) The Governor is the final disciplinary authority for all officers and employees.

(2) The relevant Commission shall conduct disciplinary proceedings against an officer or employee alleged to have committed misconduct referred to it by the Director, consequent to a report received from the Deputy Governor, a Permanent Secretary or Head of Department or otherwise.

(3) The relevant Commission shall after the completion of the disciplinary proceedings, advise the Governor of its decision including a recommendation on the appropriate penalty to be imposed.

(4) Where the relevant Commission is the Judicial and Legal Services Commission and, the relevant officer is a person holding the office of

- (a) Attorney General;
- (b) Director of Public Prosecutions;
- (c) Magistrate;

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section 3(3) of the Service Commissions Act, 2011 shall apply.

Interdiction.

10610. (1) Where disciplinary or criminal proceedings have been [AS35] or are about to be instituted against an officer or employee and the relevant Commission is of the opinion that the public interest requires that the officer or employee should forthwith cease to perform the functions of his or her office, the relevant Commission may advise the Governor to

- (a) interdict the officer or employee from the performance of the functions of his or her office;
- (b) permit the officer or employee, to receive such proportion of the salary of his or her office, not less than one half the salary to which the officer or employee would have been entitled had the officer not been interdicted as the relevant Commission considers appropriate taking into account all the relevant circumstances; and

- (c) for a period of not more than 6 months,

and notice of the interdiction shall be in writing and shall be sent to the officer or employee as soon as practicable.

(2) Where a period of more than 6 months has elapsed in respect of an officer or employee who is interdicted under ~~subsection~~paragraph (1) and the charge against the officer or employee has not been determined, the relevant Commission may extend the period of interdiction for such period as it determines, and the officer or employee shall receive the salary to which he would have been entitled but for the interdiction.

(3) Notwithstanding ~~subsection~~paragraph (1), where the relevant Commission is of the opinion that the officer's or employee's continued presence on the job is not likely to jeopardise or influence the investigation, the relevant Commission may advise the Governor to

- (a) allow the officer or employee to remain in his or her current post; or
- (b) assign the officer or employee to another office temporarily where such assignment is not likely to hinder in any way the disciplinary proceedings.

(4) If disciplinary proceedings against any such officer or employee result in his or her exculpation, the officer or employee shall be entitled to the full amount of the salary and other benefits which he or she would have received if he or she had not been interdicted but if the proceedings result in any punishment other than dismissal, the relevant Commission shall advise the Governor that the officer or employee be allowed such salary as the relevant Commission thinks fit or as the relevant Commission considers appropriate taking into account all the relevant circumstances.

(5) An officer or employee who is under interdiction from duty may not leave the Territory without first notifying the Director of his or her intention to leave the Territory.

10741. ~~A relevant Commission shall not be bound by the rules of evidence usually applicable to proceedings in a court but the relevant Commission shall~~ [AS36]

Standard of proof, evidence, etc.

- (a) ~~adhere to the principles of natural justice;~~
- (b) ~~act independently, impartially and seriously;~~

(c) — conduct its proceedings in a timely manner, and

(d) — adjudicate matters before it in accordance with the principles of “on the balance of probabilities”.

Suspension of increment pending proceedings.

10812. (1) A Permanent Secretary or Head of Department may advise the Director, to suspend or withhold^[AS37] an officer’s or employee’s increment where disciplinary proceedings or criminal proceedings have been or are about to be instituted against that officer or employee.

(2) The Permanent Secretary or Head of Department shall inform the officer or employee concerned that the increment may be suspended or withheld and if a decision is not taken finally to withhold the increment, it shall be restored from the date that it was due.

Non-payment of emoluments on conviction.

10913. An officer or employee convicted of an offence and sentenced to imprisonment shall not receive any of his or her emoluments after the date of judgment by the court and shall be dismissed from the service with effect from the date of judgment by the court but may be re-engaged with the approval of the Governor.

PART-CHAPTER XXII

ASSOCIATION OF OFFICERS AND EMPLOYEES

Interpretation for this PartChapter.

11014. In this PartChapter “existing association” means the Civil Service^[AS38] Association, which shall, after the commencement of this ActOrder, be known as the Public Service Association or any other association replacing it.

Representation of officers and employees.

1151. The Government recognises the Public Civil Service Association^[AS39] as is the duly appointed bargaining body for and on behalf of officers and employees on any matter relating to

- (a) grievances;
- (b) remuneration;
- (c) terms and conditions of employment; and
- (d) any other matters of concern to officers or employees.

Association to make rules.

1126. (1) The Public Service Association shall make Rules providing for the good government of the association and for carrying out the objects of the association, and with respect to such Rules, the following shall have effect.

~~(2) The Rules shall contain provisions in respect of the following matters:~~

- ~~(a) the name of the association and the place of meeting for its business;~~
- ~~(b) the whole of the objects for which the association is established, the purposes for which its funds shall be applicable, and the conditions under which any member may become entitled to any benefit assured thereby, and the fines and forfeitures to be imposed on any member of the association;~~
- ~~(c) the manner of making, altering, amending, and rescinding rules;~~
- ~~(d) a provision for the appointment and removal of a general committee of management, of a trustee, treasurer, and other officers;~~
- ~~(e) a provision for the investment of the funds, and for an annual or periodical audit of accounts;~~
- ~~(f) the inspection of the books and names of members of the association by every person having an interest in its funds;~~
- ~~(g) the manner of dissolution;~~
- ~~(h) the protection of voting rights of members of the association and the general conduct of elections;~~
- ~~(i) the powers, duties and functions of the Executive Committee of the association;~~
- ~~(j) disputes between members of the association and the Executive Committee thereof; and~~
- ~~(k) a prohibition against admission to membership with respect to an officer or employee who is a member of an appropriate recognised association.~~

~~(3) A copy of the Rules and every amendment thereto shall be delivered by the association to every officer or employee who is a member of that association on demand on payment of the prescribed sum.~~

Recognition of
other
associations.

1137. ~~The Governor may, by order published in the *Gazette*, recognise associations, other than the existing association, existing before or formed after the commencement of this *Act* Order and, the provisions of this *PartChapter* shall, with the necessary modifications apply to those associations.~~

PART XXIII MISCELLANEOUS

Medical Board.

11432. (1) ~~Where a request is made by the [AS 40] Director under this *Act* Order and the Chief Medical Officer has determined, he or she may from time to time appoint a Medical Board for the purpose of conducting medical examinations of officers or employees as required.~~

(2) ~~A Medical Board constituted in terms of *subsectionparagraph* (1) shall consist of the following:~~

- (a) ~~the Chief Medical Officer who shall be the chairman of the Board;~~
- (b) ~~a medical doctor who has the technical or special knowledge necessary for the purpose of conducting the medical examination;~~
- (c) ~~a psychiatrist or psychologist doctor in the case of an officer with mental health problems or any other medical doctor in the case of any other health problems.~~

~~(3) (3) For the purpose of this *section* Order the Medical Board shall examine the officer and submit under confidential cover, a report of its findings within a period not exceeding three months, to the Director.~~

Organisational
powers of
Permanent
Secretaries and
Heads of
De~~part~~ment.

13153. ~~In relation to a ministry or de~~part~~ment, a Permanent Secretary or Head of De~~part~~ment, acting in accordance with such guidelines issued from time to time by the Deputy Governor, on the advice of the Director, may determine the organisational structures and arrangements within that ministry or department.~~

Appointment
to post not yet
relinquished.

11634. Whenever an officer or employee is on leave pending relinquishment of his or her post, another officer or employee may be appointed to that post and that other officer or employee shall be deemed to be the sole holder of that post.

Orientation.

11735. Persons appointed to the service shall receive the appropriate orientation according to policies and procedures established by the Director.

11836. (1) Unless the exigencies of the service requires otherwise, officers or employees are required to work 40 hours a week, and the following hours of work shall normally apply: Hours of work.

- (a) Mondays to Fridays: 8.30 a.m. to 4.30 p.m. one hour being allowed for lunch between the hours of 12.00 a.m. and 2.00 p.m. and the lunch breaks shall be staggered as necessary to minimise the interruption of service delivery;
- (b) special hours of work may be fixed for officers employed in any particular service or department or for any class of employee, but the hours should not exceed 40 hours per week for any officer.

(2) A Permanent Secretary or Head of Department may require an officer or employee to work temporarily for longer hours than those specified in subsectionparagraph (1)(b) whenever the public interest so requires.

(3) Notwithstanding subsectionparagraph (1), officers or employees of a department, which provides essential services or officers or employees who undertake field work may be required to work in excess of the hours of work specified in subsectionparagraph (1) and may also be required to work on weekends or public holidays where the nature of the work so demands.

11937. (1) An officer or employee shall evidence his or her time of arrival at and departure from work by one of the following means: Attendance register.

- (a) attendance register;
- (b) mechanical or electronic applications; or
- (c) other methods approved by the Director,

and an officer or employee shall observe strict punctuality and regular attendance at the workplace.

(2) Notwithstanding subsectionparagraph (1), the Director may exempt certain categories of officers or employees from evidencing their time of arrival and departure from work.

(3) A Permanent Secretary or Head of Department, shall bring to an officer's or employee's notice

- (a) any case of habitual unpunctuality or absenteeism during a specific month;
- (b) cases of working hours less than the minimum laid down or irregular attendance may result in disciplinary charges.

(4) A Permanent Secretary or Head of Department shall report to the Director, any of the matters referred to in ~~subsection~~paragraph (3) and the Director may

- (a) deduct an amount from an officer's or employee's salary in accordance with ~~subsection~~paragraph (5) for any period of late attendance without reasonable excuse; or
- (b) address the matter of late attendance of that officer or employee through disciplinary proceedings in accordance with ~~Part~~Chapter XXI.

(5) Deductions under ~~subsection~~paragraph (4)(a) shall be calculated for every late period, the rate of pay proportionate to the salary the officer or employee would have received for that late period.

(6) The Director shall, in writing inform the officer or employee of any deduction in salary made in accordance with this ~~section~~Order and shall give the reasons for the deductions.

Copyright
and
royalties.

12038. (1) Any works produced by officers or employees for use of the service, as part of the duties for which they are engaged shall be copyrighted to the Government but the officer or employee may be allowed the royalties from the sale of any such work if the work is sold outside of the service.

(2) The right of ownership is vested in officers or employees for any work created

- (a) at their own initiative;
- (b) outside the scope of employment;
- (c) without the use of government resources; and
- (d) without the engagement of another officer or employee or other resources of the Government.

(3) Officers and employees are required to

- (a) seek permission from the Deputy Governor, where necessary; and
- (b) credit source with appropriate reference,

for use of any works that is copyrighted to the Government.

(4) An officer or employee shall not use works including computer software, which are subject to copyright and may require the payment of royalties to the author or to the authority in which the copyright is vested.

(5) The Permanent Secretary or Head of Department may seek the advice of the Attorney General where there is doubt as to whether copyright exists in a work or as to who is entitled to the royalties.

13219. (1) Permanent Secretaries and Heads of Department shall maintain such personnel records and statistics as may be required by the Director.

Personnel records, etc.

(2) The Permanent Secretary or Head of Department shall keep a record of performance evaluations in the personal file of the officer or employee and ensure that a copy of the performance evaluation is provided to the Director.

(3) Officers or employees shall have the right to personnel correspondence and confidential access to all records and other documents existing in his/her personnel record.

(4) Officers or employees shall have access to their personal records in the presence of the Director or an officer designated by the Director.

(5) Where an officer or employee desires to copy any correspondence from his or her personnel record, he or she shall first request from the Director or an officer designated by the Director, approval to make copies.

12341. ~~The Governor shall cause appropriate determinations, AS41 and directives made or issued in terms of this Act-Order to be included in one or more handbooks to be used by the service.~~

Public service handbooks.

1424. Nothing in this ~~Act-Order~~ shall be construed so as to effect any matters pertaining to officers and employees which are matters properly dealt with by a relevant Commission.

Matters for relevant Commissions.

SCHEDULE APPENDIX 1

[Codes 2, 5 and 7]

PART A**PUBLIC OFFICES IN ALPHABETICAL ORDER****SALARY SCALE 1**

Assistant Maintenance Officer
 Canteen Steward
 Chainman I
 Cleaner
 Conservation/Fisheries Trainee
 Custodial Worker I
 Custodian
 Fish Processor I
 Library Trainee
 Office Cleaner
 Office Generalist Trainee
 Office Generalist Trainee/Messenger
 Postal Trainee
 Trainee Technician

SALARY SCALE 2

Agricultural Trainee
 Assistant Cook
 Assistant Laundress
 Assistant Compressor Operator
 Assistant Mechanic
 Beach Warden
 Book Repairman
 CAD Trainee
 Cemeteries Officer
 Chainman II
 Court Clerk I
 Custodial Worker II
 Customs Trainee
 Driver
 Field Assistant
 Fish Handler
 Fish Processor II
 Gardener
 Groundsman
 Handyman
 Human Resources Clerk I
 Immigration Trainee

Janitor
 Labourer I
 Labourer
 Labourer/Crops
 Labourer/Field
 Learning Support Assistant
 Legal Assistant I
 Maid
 Office Generalist I
 Photo Assistant
 Postal Officer I
 Sanitation Officer
 Sewerage Works Operative I
 Teacher Trainee
 Telephone Services Representative
 Tool Storeman
 Trainee Engineer
 Trainee Mechanic
 Trainee Surveyor
 Training Clerk I

SALARY SCALE 3

Assistant Accounts Officer
 Assistant Collections Officer I
 Beach Safety Officer
 Computer Technician I
 Court Clerk II
 Craft Instructor
 Dance/Drama Instructor
 Data Entry Clerk
 Data Processor
 Environmental Health Trainee
 Field Supervisor
 Fisheries Extension Assistant
 Heavy Equipment Operator I
 Human Resources Clerk II
 Intake/Officer Manager
 Laboratory Technician I
 Labourer II

Laundress
 Legal Assistant II
 Meter Reader / Serviceman I
 Office Generalist II
 Paver Assistant
 Plant Operator II
 Plant Quarantine Assistant I
 Postal Officer II
 Secretary I
 Secretary, Long Look Lands
 Commission
 Senior Tradesman
 Sewerage Works Operative II
 Survey Technician I
 Tractor Driver (Operator)
 Trainee Draughtsman
 Training Clerk II
 Veterinary Assistant I
 Waste Management Trainee
 Waterworks Operative I

SALARY SCALE 4

Air Condition Repairman
 Assistant Laboratory Technician
 Assistant Marine Officer
 Assistant Programme Supervisor
 Assistant Statistical Officer
 Assistant Surveyor
 Bodyman/Welder
 CAD Technician I
 Carpenter I
 Construction and Maintenance
 Works Operative I
 Court Clerk III
 Custodial Supervisor
 Customs Guard
 Customs Officer I
 Draughtsman I
 Electrical Assistant
 Electrician I
 Engineer Technician I
 Engineering Laboratory Technician I
 Facilities Maintenance Technician
 Fire Officer/Mechanic I
 Geriatric Aide I
 Heavy Equipment Operator II

House Parent
 Human Resources Clerk III
 Immigration Officer I
 Kitchen Assistant
 Legal Assistant III
 Library Assistant I
 Library Assistant I (Driver)
 Library Records Officer
 Maintenance Officer I
 Mason
 Mechanic I
 Mechanical Inspector I
 Meter Reader / Serviceman II
 Museum Supervisor
 Office Generalist III
 Plant Maintenance Officer
 Plumber
 Postal Officer III
 Product Assistant
 Pump Technician
 Recycling Officer
 Revenue Officer II
 Secretary II
 Security Guard
 Security Officer/Watchman
 Spray man
 Stores Clerk
 Store Keeper
 Sub Officer
 Supervisor (Custodial Worker)
 Supervisor (Fish Processor)
 Survey Technician II
 Systems Operator I
 Training Clerk III
 Vector Control Officer
 Watchman
 Waterworks Operative II

SALARY SCALE 5

Accounts Officer I
 Agricultural Assistant I
 Assistant Auditor
 Assistant Budget Officer
 Assistant Collections Officer II
 Assistant Research Officer
 Assistant Vector Control Supervisor

Auxiliary Police Officer
 Bailiff
 Chargehand
 Construction and Maintenance
 Works Operative II
 Deputy Security Supervisor
 Electrician II
 Engineer Technician II
 Engineering Laboratory Technician
 II
 Executive Officer
 Fisheries Assistant
 Geriatric Aide II
 Graphic Artist I
 Heavy Equipment Operator III
 Housekeeper
 Human Resources Records Clerk
 Legal Executive Officer
 Library Assistant II
 Library Assistant II (Driver)
 Licensing Clerk I
 Livestock Assistant I
 Marine Biologist Assistant
 Office & Housing Services
 Technician
 Orderly
 Personal Assistant
 Planning Assistant I
 Plant Maintenance Programme
 Supervisor
 Plant Operator/Technician
 Production Technician I
 Programme Supervisor
 Records Officer I
 Revenue Collections Officer I
 Senior House Parent
 Senior Store Clerk
 Systems Operator II
 Teacher Grade I
 Training Assistant I

SALARY SCALE 6

Asphalt Plant Supervisor
 Assistant Addiction Counsellor
 Assistant Chef
 Assistant Computer Programmer

Assistant Information Officer
 Assistant Nurse
 Assistant Systems Operator
 Supervisor
 Building Foreman
 CAD Technician II
 Carpenter II
 Chaplain
 Computer Technician II
 Cook
 Customs Officer II
 Draughtsman II
 Fire Officer
 Fire Officer/Mechanic II
 Fisheries Foreman
 Foreman
 General Foreman
 Head Gardener
 Immigration Officer II
 Intelligence Officer
 Laboratory Assistant
 Lifeguard
 Livestock Assistant II
 Machine Technician/Stores Clerk
 Maintenance Officer II
 Mechanic II
 Photographer
 Planning Assistant II
 Prison Officer I
 Probationary Constable
 Roads Foreman
 Security Supervisor
 Senior Bailiff
 Senior Plant Operator/Technician
 Slaughter man
 Tax Officer I
 Telephone Technician
 Vector Control Supervisor

SALARY SCALE 7

Abattoir Assistant
 Accounts Officer II
 Agricultural Assistant II
 Agricultural Technician
 Assistant Engineer
 Assistant Roads Officer

Branch Postmaster
 CAD Technician III
 Call Handlers/Dispatcher
 Collections Officer
 Community Development Assistant
 Conservation Assistant
 Engineer Technician III
 GIS Technician
 Graphic Artist II
 Home Supervisor
 Human Resources Assistant
 Incinerator Plant Foreman
 Labour Officer
 Leading Fire Officer
 Licensing Clerk II
 Major Crime Administrator
 Manager of Senior Citizen
 Programme
 Mechanical Inspector II
 Plant Quarantine Assistant II
 Postal Executive
 Plumbing Inspector
 Production Technician II
 Programme Aid
 Records Officer II
 Revenue Collections Officer II
 Senior Assistant Nurse
 Senior Pump Technician
 School Librarian
 Scopist
 Senior Executive Officer
 Senior Laboratory Technician
 Supervisor
 Senior Legal Executive Officer
 Senior Library Assistant
 Social Welfare Officer
 Statistical Officer
 Sub Postmaster
 Superintendent (Anegada)
 Superintendent (Virgin Gorda)
 Superintendent, W&S
 Surveillance Assistant
 Systems Operator Supervisor
 Training Assistant II
 Veterinary Assistant II

SALARY SCALE 8

CAD Specialist
 Case Manager
 Clerk of Works
 Constable
 Customs Officer III
 Detective
 District Officer
 Express Mail Coordinator
 Foreign Language Teacher
 Labour Inspector
 Legal Cadet
 Mechanic Supervisor
 Paralegal I
 Philatelic Bureau Supervisor
 Postal Supervisor
 Prison Officer II
 Restorative Justice Officer
 Senior Branch Postmaster
 Sub Officer
 Tax Officer II
 Teacher Grade II
 Trade Inspector
 Veterinary Assistant III
 Workshop Foreman

SALARY SCALE 9

Accounts Supervisor I
 Administrative Officer
 Agricultural Officer I
 Architect I
 Assistant Human Resources
 Manager
 Assistant Postmaster
 Assistant Programme Officer
 Assistant Training Manager
 Aviation Technical Staff Coordinator
 Business Systems Analyst
 Civil Engineer I
 Communications Specialist
 Community Development Officer
 Court Reporter I
 Crime Scene Technician
 Economist I
 Executive Chef
 Electrical Inspector

Emergency Communications Officer
 Engineer I
 Finance Cadet
 Fish Technologist
 Geographic Information Systems
 Officer (TCP)
 GIS Analyst
 Graphic Artist III
 Incinerator Plant Manager
 Information Officer I
 Investment Promotions Officer
 Laboratory Technician
 Lands Officer
 Librarian I
 Maintenance School Supervisor
 Maintenance Supervisor
 Matron
 Operator Supervisor
 Paralegal II
 Physical Planner I
 Planning Officer
 Production Technician III
 Procurement Officer
 Programmer I
 Project Administrator
 Project Manager I
 Quantity Surveyor I
 Rehabilitation Officer
 Research Officer
 Roads Officer
 Senior Accounts Officer
 Sister Islands Disaster Liaison
 Officer
 Station Officer
 Statistician I
 Surveyor I
 Systems Administrator I
 Tax Inspector
 Technical Planning Officer
 Trade Development Officer
 Trade Licensing Officer
 Traffic Maintenance Supervisor
 Training Officer
 Waste Management Officer
 Web Administrator
 Workshop Manager

SALARY SCALE 10

Abattoir Manager
 Accounts Manager
 Accounts Supervisor II
 Assistant Conservation Officer
 Assistant Fisheries Officer
 Auditor
 Budget Officer I
 Building Inspector I
 Building Supervisor
 Compliance Officer I
 Computer Training Coordinator
 Court Reporter II
 Environmental Health Officer
 Guidance Officer I
 Internal Auditor I
 Labour Dispute Officer
 Labour Protections Officer
 Labour Relations Officer
 Librarian II
 Marine Officer
 Orderly/Protection Officer
 Parole Officer
 Payroll Officer
 Postal Inspector
 Principal Officer
 Probation Officer
 Programmer II
 Project Coordinator
 Registered Nurse
 Residential Manager
 Senior Court Administrator
 Senior Customs Officer
 Senior Immigration Officer
 Senior Labour Inspector
 Senior Labour Officer
 Sergeant
 Sergeant-at-Arms/Protection Officer
 Social Worker I
 Systems Administrator II
 Teacher Grade III
 Way Leave Officer

SALARY SCALE 11

Aerodrome Inspector

Agricultural Officer II
 Air Traffic Services Inspector
 Architect II
 Assistant Manager, BVI Fishing Complex
 Assistant Marine Surveyor
 Assistant Superintendent of Prison
 Budget Officer II
 Cadastral Information Manager
 Cash Management Officer
 Civil Engineer II
 Communications Officer I
 Compliance Officer II
 Consumer Affairs Officer
 Crime Analyst
 Data and Security Analyst
 Economist II
 Education Officer I
 Emergency Communications Manager
 Engineer II
 Environmental Education Officer
 Environmental Officer I
 Finance Officer
 Financial Accountant
 Fisheries Officer
 Graphic Supervisor
 Guidance Officer II
 Immigration Officer (Surveillance)
 Information Manager
 Information Officer II
 Inspector
 Internal Auditor II
 Librarian III
 Lifeguard Supervisor
 Livestock Officer
 Marine Biologist
 Marketing, Research and Extension Officer
 Media Relations Coordinator
 Network Administrator
 Physical Planner II
 Planning and Preparedness Manager
 Prison Counsellor
 Production Supervisor
 Programme Officer

Project Manager II
 Public Health Officer I
 Public Relations Officer
 Quantity Surveyor II
 Research Analyst
 Retail and Marketing Manager
 School Nurse
 Senior Auditor
 Senior Case Manager
 Senior Collections Officer
 Senior Tax Administrative Officer
 Senior Tax Inspector
 Senior Training Officer
 Social Worker II
 Statistician II
 Surveyor II
 Teacher Grade IV
 Training Manager
 Truancy Officer

SALARY SCALE 12

Architect III
 Assistant Chief Immigration Officer
 Assistant Commissioner of Customs
 Assistant Commissioner of Inland Revenue
 Assistant Director of Central Statistics
 Assistant Labour Commissioner
 Assistant Manager/Nurse
 Assistant Manager, Department of Waste Management
 Assistant Principal, Primary
 Assistant Registrar of Lands
 Assistant Registrar of Shipping
 Building Inspector II
 Business Development Manager
 Civil Engineer III
 Communications Officer II
 Compliance Officer III
 Deputy Chief Environmental Health Officer
 Deputy Chief Information Officer
 Deputy Commissioner of Motor Vehicle
 Deputy Principal

Deputy Telephone Services Manager
 Economist III
 Employment Services Manager
 Engineer III
 Financial Comptroller
 Geographical Information Systems
 Manager
 Graduate Land Surveyor
 Guidance Officer III
 Hansard Editor
 Human Resources Business Partner
 Intake Officer/Investigator
 Internal Auditor III
 Labour Protection Manager
 Management Accountant
 Paralegal
 Programmer III
 Project Manager III
 Public Health Communications
 Specialist
 Public Health Officer II
 Quantity Surveyor III
 Reading Specialist
 Senior Administrative Assistant
 Senior Administrative Officer
 Senior Assistant Human Resources
 Manager
 Senior Court Reporter
 Senior Investment Promotions
 Officer
 Senior Lands Officer
 Senior Marine Officer
 Senior Planning Officer
 Senior Probation/Parole Officer
 Senior Programme Manager
 Senior Procurement Officer
 Senior Project Coordinator
 Senior Technical Planning Manager
 Senior Trade Licensing Officer
 Social Worker III
 Special Education Teacher
 Special Projects Officer
 Speech and Language Pathologist
 Statistician III
 Structural Engineer
 Superintendent, Children's Home

Surveyor III
 Systems Librarian
 Training Manager
 Veterinary Officer I

SALARY SCALE 13

Assistant Principal, Secondary
 Audit Manager
 Aviation Secretary
 Budget Analyst
 Business Manager
 Chief Inspector
 Computing and Communications
 Officer
 Compliance Manager
 Crown Counsel
 Deputy Chief Agricultural Officer
 Deputy Chief Fire Officer
 Deputy Chief Librarian
 Deputy Chief Surveyor
 Deputy Clerk, House of Assembly
 Deputy Court Manager
 Deputy Director Civil Aviation
 Deputy Director of Culture
 Deputy Superintendent of Prison
 Deputy Registrar
 EAP Counsellor
 Education Officer II
 Environmental Officer II
 Facilities Manager
 Human Resources Analyst
 Information Systems Services
 Officer
 Information Technology Manager
 Judicial Assistant
 Lead Data and Security Analyst
 Legislative Counsel
 Maintenance Manager
 Manager, Adina Donovan Home
 Manager, BVI Fishing Complex
 Payment Manager
 Planning and Quality Officer
 Principal (Primary)
 Project Engineer
 Programme Director
 Remediation Coordinator

Reporting Manager
 Research and Development Officer
 Revenue Manager
 Security Coordinator
 Senior Research Analyst
 Senior Payroll Officer
 Support Services Manager
 Technology Support Services Officer
 Veterinary Officer II

SALARY SCALE 14

Archivist
 Assistant Cabinet Secretary
 Assistant Secretary
 Assistant Director of Projects
 Assistant Secretary/Protocol Officer
 Assistant Secretary, External Affairs
 Chief Information Officer
 Deputy Accountant General
 Deputy Chief Immigration Officer
 Deputy Chief Planner
 Deputy Chief Social Development Officer
 Deputy Director of Agriculture
 Deputy Director of Central Statistics
 Deputy Director of Fisheries
 Deputy Director of Internal Audit
 Deputy Commissioner of Customs
 Deputy Commissioner of Inland Revenue
 Deputy Director of Information Technology
 Deputy Director of Trade and Consumer Affairs
 Deputy Director of Water & Sewerage
 Deputy Labour Commissioner
 Deputy Postmaster General
 Disaster Coordinator for Health and Social Services
 Educational Psychologist
 Electrical Engineer
 Finance and Planning Officer
 Financial Analyst
 Gender Affairs Coordinator

Coordinator of Health Promotion Services
 Health and Safety Coordinator
 Human Resources Manager
 Marine Surveyor
 Private Secretary
 Procurement Coordinator
 Public Health Officer III
 Public Service Commission Secretary
 Registrar of Shipping
 Secretary General (UNESCO)
 Sister Island Programme Coordinator
 Superintendent of Police

SALARY SCALE 15

Assistant Parliamentary Counsel
 Budget Coordinator
 Business Support Director
 Chief Environmental Health Officer
 Chief Records Management Officer/Archives Coordinator
 Chief Surveyor
 City Manager
 Clerk, House of Assembly
 Commissioner of Motor Vehicles
 Deputy Auditor General
 Deputy Chief Education Officer
 Deputy Director of Public Works
 Deputy Director of VI Shipping Registry
 Deputy Registrar of Lands
 Deputy Registrar of Supreme Court
 Director of Culture
 Director of Emergency Call Centre
 Director, Safe Haven Transitional Centre
 Director of Youth Affairs and Sports
 Executive Private Secretary
 Lead Investigator
 Manager, Waste Management
 Policy Analyst I
 Principal (Secondary)
 Senior Crown Counsel
 Senior Legislative Counsel
 Telephone Services Manager

SALARY SCALE 16

Chief Agricultural Officer
 Chief of Drugs and Pharmaceutical Services
 Chief Fire Officer
 Chief Librarian
 Chief Nursing Officer
 Chief Operations Officer
 Chief Social Development Officer
 Court Manager
 Curriculum Coordinator
 Deputy Cabinet Secretary
 Director of Communication
 Deputy Commissioner of Police
 Deputy Director of Human Resources
 Deputy Director, International Finance Centre
 Deputy Secretary
 Director of Civil Aviation
 Director of Fair Trade
 Director of Investment Promotions
 Director of Trade & Consumer Affairs
 Director of Planning
 Executive Private Secretary
 Medical Officer of Health
 Postmaster General
 Superintendent of Prison
 Supervisor of Elections

SALARY SCALE 17

Accountant General
 AML/CFT Implementation Coordinator
 Chief Conservation and Fisheries Officer
 Chief of Infrastructural Planning, Research and Development
 Chief Education Officer
 Chief Immigration Officer

Chief Planner
 Chief Registrar of Lands
 Commissioner of Inland Revenue
 Commissioner of Customs
 Director of Disaster Management
 Director of Information Technology
 Director of Internal Audit
 Director of International Affairs Secretariat
 Director of International Tax Authority
 Director of Virgin Islands Shipping Registry
 Director of Projects
 Director of Public Works
 Director of Water & Sewerage
 Labour Commissioner
 Magistrate
 Parliamentary Counsel
 Policy Analyst II
 Policy Analyst/Strategic Advisor
 Principal Crown Counsel
 Registrar General
 Registrar of Supreme Court

SALARY SCALE 18

Auditor General
 Chief Digital Information Officer
 Chief Medical Officer
 Chief Parliamentary Counsel
 Commissioner of Police
 Deputy Financial Secretary
 Director of Central Statistics
 Director, Human Resources
 Trade Commissioner
 Senior Magistrate

SALARY SCALE 19

Cabinet Secretary
 Chairman, Law Reform Commission
 Complaints Commissioner

PART B

PERMANENT SECRETARIES

Permanent Secretary in the Premier's Office
 Permanent Secretary in the Ministry of Health and Social Development
 Permanent Secretary in the Deputy Governor's Office
 Financial Secretary in the Ministry of Finance
 Permanent Secretary in the Ministry of Education and Culture
 Permanent Secretary in the Ministry of Communication and Works
 Permanent Secretary in the Ministry of Natural Resources and Labour

PART C

HEAD OF DEPARTMENTS CHARGED WITH RESPONSIBILITY OF A DEPARTMENT

| <i>Department</i> | <i>Head of Department</i> | <i>Function of the department</i> |
|---|---|---|
| BVI Shipping Registry | Director, BVI Shipping Registry | To implement the Maritime policies of the Government covering shipping operations, safety of life at sea, security and the prevention of, and response to, sea pollution from vessels. |
| Central Statistics Office | Director, Central Statistics Office | To provide statistical information, economic analysis to facilitate informed, evidence-based decision making, planning and policy formulation for the overall strategic development of the territory. |
| Town and Country Planning | Chief Planner | To provide for the administration and operation of the system of planning to ensure that the Territory is developed in an orderly and sustainable manner. |
| Trade, Investment, Promotion and Consumer Affairs | Director, Trade, Investment, Promotion and Consumer Affairs | To monitor and provide assistance to small businesses and to regulate intellectual property and trade. |

| | | |
|--|---|---|
| International Affairs Secretariat | Director, International Affairs Secretariat | To coordinate and implement BVI's international relations and provide advice on international affairs. |
| Customs | Commissioner of Customs | To collect customs and excise duties and curb illegal imports while facilitating trade. |
| Information and Public Relations | Chief Information Officer | To provide the public with up-to-date, comprehensive and meaningful information on Government policies, services and activities, and on matters which may be of public interest. To manage the Government Printing Press. |
| Inland Revenue | Commissioner, Inland Revenue | To administer fiscal legislation in relation to income and other taxes. |
| Post Office | Postmaster General | To provide reliable, and affordable postal services to the territory. |
| Internal Audit | Auditor General | To conduct internal audits and investigations under the Internal Audit Act. |
| Treasury Department | Accountant General | To maintain uniform accounting system across Government departments; supervise, monitor and report on all Government financial transactions and manage public debt. |
| Department of Information and Technology | Director, Information and Technology | To direct and control the development, implementation and maintenance and security of the Government's information and communications strategy and systems. |
| International Tax Authority | Director, International Tax Authority | To provide professional services in relation to all cross-border tax matters. |
| Agriculture | Chief Agricultural Officer | To promote, develop and regulate farming. |
| Conservation and Fisheries | Chief Conservation Officer | To promote and coordinate development of aquaculture, |

| | | |
|----------------------------------|------------------------------------|--|
| | | coordinate, review and implementation of policies, and legislation on matters related to fishery resources, management and conservation. |
| BVI Fishing Complex | Manager, BVI Fishing Complex | To manage the operations and services of the BVI Fishing Complex. |
| Labour and Workforce Development | Labour Commissioner | To administer and implement the provisions of the Labour Code. |
| Land Registry | Chief Registrar of Lands | To maintain a register of title to freehold and leasehold land and resolve land disputes throughout the Territory. |
| Survey | Chief Surveyor | To provide professional land surveying services. |
| Youth Affairs and Sports | Director, Youth Affairs and Sports | To provide sport, recreation and youth development for young persons throughout the territory. |
| Department of Culture | Director, Department of Culture | To plan, coordinate and promote community arts and heritage programs and events. |
| Library Services | Chief Librarian | To manage library services within the territory. |
| Her Majesty's Prison | Superintendent of Prisons | To securely detain offenders while providing rehabilitation services to them to help them reintegrate into society. |
| Department of Education | Chief Education Officer | To provide for the administration and management of the education department, advises on education policies, practices and procedures. |
| Waste Management | Manager, Waste Management | To manage the overall operations of the landfill and waste management plan for the territory. |
| Social Development | Chief Social Development Officer | To regulate the welfare sector and ensure that the providers of social welfare services comply with set standards. |
| Facilities Management | Facilities Manager | To provide cleansing services, plan and carry out maintenance work of CAB offices. |
| Civil Aviation | Director, Civil Aviation | To provide oversight for the |

| | | |
|-------------------------------|--|---|
| Fire and Rescue | Chief Fire Officer | inspection, maintenance, coordination, licensing and regulation of civil aviation activities. To provide fire-fighting and rescue services and take protective action against, natural and other emergencies. |
| Water and Sewerage | Director, Water and Sewerage | To execute the functions and duties of the public administration in matters relating to the design, implementation and dissemination of water. |
| Motor Vehicles | Commissioner of Motor Vehicles | To manage activities in the inspection, licensing and registration of motor vehicles. |
| Public Works | Director, Public Works | To design, plan and carry out public infrastructure works and projects. To provide ancillary building project services, manufacturing services, public cleansing service and a regulatory framework for the building construction industry. |
| Telephone Services Management | Manager, Telephone Services Management | To manage the telecommunication services provided to ministries and departments. |

PART D

DEPARTMENTS NOT SUBJECT TO MINISTERIAL CONTROL

| <i>Department</i> | <i>Head of Department</i> | <i>Function of the department</i> |
|-----------------------------|---------------------------|--|
| Attorney General's Chambers | Attorney General | To be the head legal adviser for the Government. |
| Cabinet Office | Cabinet Secretary | To support the workings of Cabinet. |
| Complaints Commission | Complaints Commissioner | To investigate any action taken by a department of |

| | | |
|---|---------------------------------|---|
| Office of the Director of Public Prosecutions | Director of Public Prosecutions | Government or agency in the exercise of its administrative functions. To institute, conduct and supervise prosecutions and related proceedings. |
| Audit | Auditor General | To conduct independent audits and issue appropriate reports on the use of public resources. |
| Human Rights Commission | Human Rights Commissioner | To promote and protect human rights. |
| Office of the Registrar of Interests | Registrar of Interest | To keep record of the financial interests of members of the House of Assembly. |

PART E

DEPARTMENTS OTHER THAN DEPARTMENTS NOT SUBJECT TO MINISTERIAL CONTROL

| <i>Department</i> | <i>Head of Department</i> | <i>Function of the department</i> |
|---------------------|-------------------------------|---|
| Premier's Office | Permanent Secretary | To support the Premier in the fulfilment of his or her constitutional duties. |
| Disaster Management | Director, Disaster Management | To coordinate the enforcement and implementation of policies and plans to respond, rapidly and effectively to national disasters and major emergencies. |
| Governor's Office | Executive Secretary | To support the Governor in the fulfilment of his or her constitutional duties. |
| Supreme Court | Registrar | To support and facilitate the administration of justice. |
| Civil Registry and | Registrar General | To provide and maintain a |

| | | |
|------------------|-----------------------------|--|
| Passport Office | | reliable system for the storage of public records, access services to these records and an efficient registry service which supports the registration of births, deaths, adoptions and marriages in Territory. |
| Commercial Court | Registrar | To support and facilitate the administration of justice. |
| Magistracy | Court Manager | To execute the functions and duties in relation to the provision of court services in BVI. |
| Elections Office | Superintendent of Elections | To support the Supervisor of Elections in the exercise of its functions. |

SCHEDULE APPENDIX 2

[Codes 12 and 25]

OATH / AFFIRMATION OF OFFICE AND CONFIDENTIALITY**PART A****OATH OR AFFIRMATION OF ALLEGIANCE**

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].

PART B

OATH OR AFFIRMATION OF OFFICE AND CONFIDENTIALITY

As a member of the Public Service, I, , *[employee name]*
do solemnly swear/affirm *[circle one]* that I will

(1) faithfully and honestly execute the duties that devolve upon me by reason of my employment in the Public Service without fear or favour, affection or ill-will and that in execution of that office I will know, uphold and preserved the Constitution of the Virgin Islands.

(2) honour and faithfully abide by the Code of Conduct and Ethics for the Public Service, and

(3) to the best of my ability,

- (a) act with integrity, putting the interests of the public and the public service above my own personal interest and avoiding all conflicts of interest, whether real or perceived;
- (b) safeguard confidential information, not divulging it unless I am either authorised to do so or required to do so by law;
- (c) base my advice, recommendations and decisions on the objective evidence that is available to me;
- (d) serve the government impartially; and
- (e) conduct myself honestly and ethically, in a manner that maintains and enhances the public's trust and confidence in the public service and does not bring it into disrepute.

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

Sworn/Declared before me this.....day of.....20...

.....
Person giving Oath or Affirmation

.....
Person administering Oath or Affirmation

SCHEDULE APPENDIX 3

[Code 24(1)(a)]

THE CODE OF CONDUCT AND ETHICS

General.

This Code also applies to public officers who are governed by the *Police Act (Cap. 165)*, the *Prisons Act (Cap. 166)* and the *Fire Service Act (Cap. 164)* where no specific provision under those Acts or under the statutory instruments made under those Acts applies in relation to the misconduct specified in this Code.

1. This Code specifies the values that officers and employees are expected to uphold in the Public Service.

Role of the Public Service.

2. (1) The role of the service is to

- (a) provide and administer the public services for which the Government is responsible with integrity, honesty and impartiality;
- (b) assist with the formulation of the policies of Government by providing frank, honest, comprehensive, accurate and timely advice;
- (c) implement policy, programmes and decisions of Government.

(2) All officers in the service, while carrying out the role referred to in subparagraph (1), shall uphold those values that reflect a service that

- (a) is apolitical, impartial and professional;
- (b) maintains the highest ethical standards;
- (c) recruits and promotes persons based on merit;
- (d) is responsive to the Government in implementing the Government's policies;
- (e) provides a workplace that is free from discrimination and promotes the fair treatment of officers;
- (f) delivers services fairly, effectively, impartially and courteously to the public;

- (g) has the leadership of the highest quality;
- (h) establishes relations in the workplace that value communication, consultation, co-operation and input from officers and employees on matters that affect their workplace;
- (i) provides conditions conducive to the good health and welfare and safety in the workplace;
- (j) focuses on achieving results and managing performance;
- (k) provides a reasonable opportunity to all eligible members of the community to apply for employment in the service;
- (l) is a career-based service to enhance the effectiveness and cohesion of Territory's democratic system of Government;
- (m) provides a fair system of review of decisions taken in respect of persons in the Public Service; and
- (n) provides a system of preserving officer's and employee's privacy.

(3) For the purposes of subparagraph (2)(c), a decision relating to engagement or promotion is based on merit where an assessment for that purpose

- (a) is made of the relative suitability of the candidates for the duties, using a competitive selection process;
- (b) is based on the relationship between the candidates' work-related qualities and the work-related qualities genuinely required for the duties;
- (c) focuses on the relative capacity of the candidates to achieve outcomes related to the duties; and
- (d) is the primary consideration in making the decision.

(4) A relevant Commissions shall issue directions in writing in relation to each of the values mentioned in subparagraph (2) for the purpose of

- (a) ensuring that the service incorporates and upholds those values; and
- (b) determining where necessary, the scope or application of those values.

(5) Officers and employees shall uphold and promote the values referred to in subparagraph (2).

Principles of accountability, legality and the upholding of ethical standards.

3. Officers and employees shall serve the Government in accordance with the principles set out in the Code recognising:

- (a) the accountability of officers and employees to the officer in charge of their department;
- (b) the duty of all officers and employees to discharge their functions reasonably and in accordance with the law;
- (c) the duty to comply with the law, including international law and treaty obligations, and to uphold the administration of justice; and
- (d) the ethical standards governing particular professions.

Integrity, impartiality, honesty.

4. Officers and employees shall

- (a) conduct themselves with integrity, impartiality and honesty;
- (b) give honest and impartial advice to Ministers, Permanent Secretaries or Heads of Department or to the office holder in charge of their department as the case may be; and make all information that is relevant to a decision, available to them; and
- (c) not deceive or knowingly mislead Ministers, the House of Assembly or any of its Committees, Permanent Secretaries or Heads of Department or the public.

Mode of dealing with public and other officers or employees.

5. Officers and employees shall endeavour to deal with the affairs of the public sympathetically, efficiently, promptly and without bias or maladministration, being courteous and respectful in words and demeanor to all.

Use of public funds.

6. (1) Officers and employees shall endeavour to ensure the proper, effective and efficient use of public funds; and officers or employees are strictly accountable in respect of the use of those funds in accordance with the provisions of

- (a) the Public Finance Management Act, 2004, any rules, instructions and regulations made thereunder;
- (b) the Internal Audit Act, 2011 any rules, instructions and regulations made thereunder; and
- (c) the Audit Act, 2003 any rules, instructions and regulations made thereunder.

(2) Officers and employees shall not appropriate or use public funds in contravention of any applicable law.

Conflict of interest.

7. Officers and employees shall not

- (a) misuse their official position or information acquired in the course of their official duties to further their private interests or those of others; or
- (b) receive benefits of any kind from a third party that might reasonably be seen to compromise their personal judgement or integrity.

Actions to instill confidence.

8. (1) Officers and employees shall conduct themselves in a manner that will ensure the efficient and effective discharge of their duties.

(2) Officers and employees shall comply with restrictions on their political activities in accordance with this Chapter or regulations.

(3) Officers and employees shall conscientiously perform their duties and obligations and impartially assist, advise and carry out the lawful policies of the Government.

Records and non-disclosure of information.

9. (1) Officers and employees shall not, without authority, disclose official information that has been communicated in confidence within the ministry or department, or received in confidence from others.

(2) Officers and employees shall maintain official records

- (a) here a failure to do so would amount to a grave injustice; or

- (b) as required by this Code or regulations made there under or by any other law.

(3) Nothing in this Code should be taken as overriding existing statutory or common law obligations to keep confidential, or not to disclose, certain information.

(4) Officers and employees shall not seek to frustrate or influence the policies, decisions or actions of Ministers, Permanent Secretaries or Heads of Departments or of the Government by the unauthorised, improper or premature disclosure outside the service of any information to which they have had access as officers.

Improper behaviour to be reported.

10. (1) Where an officer or employee believes that he or she is being required to act in a way that

- (a) is illegal, improper, or unethical;
- (b) is in breach of an accepted convention or a professional code;
- (c) may involve possible maladministration; or
- (d) is otherwise inconsistent with this Code,

that officer or employee shall report the matter in accordance with procedures laid down in the appropriate guidelines or rules of conduct for that officer's or employee's ministry or department or in accordance with the provisions of the relevant law.

(2) An officer or employee shall report to his or her Permanent Secretary or Head of Department or where the matter involves the Permanent Secretary or Head of Department, to the Deputy Governor

- (a) evidence of any criminal or unlawful activity by others, in accordance with the relevant procedures; or
- (b) instances of breaches of this Code of which he becomes aware.

Reports to be made to Service Commissions.

11. Where an officer or employee has reported a matter referred to in paragraph 10 in accordance with the relevant procedures and believes that the response does not represent a reasonable response to the grounds of his or her concern, the officer or employee may report the matter in writing to a relevant Commission.

Declining to act on decisions.

12. (1) Subject to this Code, officers or employees shall not frustrate the policies, decisions or actions of the Government by declining to act on decisions by Ministers or the Cabinet.

(2) Where a Permanent Secretary or Head of Department, disagrees with a Minister on a matter involving a decision by a Minister or by the Cabinet, the Permanent Secretary or Head of Department shall place on record his or her disagreement with any decision or proposed course of action which the Permanent Secretary or Head of Department finds difficult to defend or which he or she regards as inconsistent with his or her obligation to see that the administration of his or her department is carried out with due regard to the propriety of the proposed course of action; and he or she shall set out the reasons for his or her disagreement.

(3) Where the Minister adheres to his or her decision, the Minister shall communicate that decision in writing to the Permanent Secretary or Head of Department, who shall carry the decision into effect.

Hours of work and punctuality.

13. (1) The hours of work of officers and employees are as provided in this Code and shall not be varied except with the approval of the Deputy Governor.

(2) Officers and employees shall attend work punctually; habitual lateness is a breach of this Code.

(3) Each ministry or department shall maintain

- (a) a register of attendance; or
- (b) some other form of time keeping acceptable to the Permanent Secretary or the Head of Department as the case may be,

for the purpose of recording the arrival and departure of officers and employees who, except with the permission of the Permanent Secretary or Head of Department, are required to record their arrival and departure.

Absence without permission.

14. (1) Officers and employees who are absent from duty without permission, except in the opinion of the Permanent Secretary or Head of Department the absence is due to illness or other unavoidable circumstances, are in breach of this

Code, and their pay may be reduced appropriately by the Permanent Secretary or Head of Department to take account of such absence.

(2) Absence as a result of illness or unavoidable circumstances referred to in subparagraph (1) shall be communicated to the Permanent Secretary or Head of Department as soon as possible on the day on which the officer is absent or expected to be absent.

Prohibited activities.

15. (1) Officers and employees while on duty shall not indulge in activities that would bring themselves or the office which they hold into disrepute.

(2) Activities such as betting, gambling, the possession or use of illegal drugs and the use of profane language shall be considered to be activities referred to in subparagraph (1).

Dress.

16. (1) Officers and employees are, while on duty, required to dress soberly, neatly and tidily and in accordance with the requirements of the job, having regard to the desirability of maintaining standards of attire consistent with the dignity of the service.

(2) The suitability of any particular form of dress to the requirements of the office should be determined by a Permanent Secretary or Head of Department in consultation with the Director of Human Resources but shall not be contrary to the provisions of subparagraph (1).

Loss or damage to property.

17. (1) Officers and employees are accountable for any equipment, tool or other property of the Government which is entrusted to them or which may come under their control in the course of duty; and shall report immediately to their supervisor, or in the absence of the supervisor, to another senior officer, any malfunction, damage or loss of any equipment so entrusted.

(2) Officers and employees may be liable for any loss or damage of any equipment, tool or other property entrusted to them or which may come under their control in the course of duty.

Private work.

18. (1) Officers and employees are permitted to undertake other paid employment only with the permission of the Deputy Governor.

(2) Notwithstanding subparagraph (1) the Governor, may designate offices, the holders of which are permitted to engage in private work outside of official hours.

(3) The Governor shall determine the conditions under which the holders of offices designated under subparagraph (2), in any individual case, are permitted to perform private work.

(4) For the purposes of subparagraphs (2) and (3) the general conditions applicable to the grant of permission for an officer or employee to engage in private work under subparagraph (1) are as follows:

- (a) at no stage shall there be any conflict of interest between the official duties and private work of the officer or employee; and
- (b) the facilities, equipment, time and services of the service shall not be used in furtherance of private work without the express permission of the service.

(5) The permission to engage in private work may be withdrawn at any time by the Deputy Governor, where the Deputy Governor is satisfied that the private work is adversely affecting the official duties of the officer or employee or the business of the service; and the officer or employee so affected shall be informed in writing of the reasons for the withdrawal.

Strikes.

19. (1) All officers and employees who are on leave at the commencement of a strike must be informed by a Permanent Secretary or Head of Department of the existence of a strike and of the fact that they must report for duty immediately unless that leave is

- (a) a leave for the purposes of study or training; and
- (b) leave outside the Territory.

(2) Officers and employees shall not be paid for any day or portion of a day during which they are on strike.

(3) Officers and employees who are not on strike and who report for duty as usual but are unable to work because of the prevailing circumstances shall be paid.

(4) When the Permanent Secretary or Head of Department is satisfied that an officer or employee who is on leave during a strike and who was given notice by

the Permanent Secretary or Head of Department of that strike pursuant to subparagraph (1) fails to report for duty as provided in that subparagraph, the Permanent Secretary or Head of Department may withhold payment of the salary or wages for that officer or employee in respect of the period of the strike during which he or she failed to report.

(5) Notwithstanding subparagraph (2), salaries may be paid to officers or employees who are absent on the grounds of illness or maternity leave where the entire period of absence is supported by a satisfactory medical certificate.

Criminal conviction.

20. (1) An officer or employee who is convicted of a criminal offence is liable to be dismissed.

(2) An officer or employee who fails to disclose when required to do so any criminal conviction that they incurred prior to or during his or her employment in the service may be liable to be dismissed.

Sexual Harassment.

21. (1) Engaging in any activity that amounts to sexual harassment is a breach of this Code which renders an officer or employee liable to dismissal.

(2) For the purposes of subparagraph (1), “sexual harassment” shall have the meaning assigned to it under code 59 of this Code. .

Use of information technology and the internet.

22. Officers and employees are required to use information technology, including the intranet, internet and other networks lawfully and responsibly and in accordance with policies and guidelines of the service.

Use of the media.

- 23.** Officers and employees shall not
- (a) be editors of any newspaper or directly or indirectly take part in the management of newspapers;
 - (b) contribute to any newspapers in the Virgin Islands or elsewhere on questions that can properly be called political or administrative, but may furnish articles upon subjects of general interest;
 - (c) make a statement to the media or allow themselves to be interviewed on questions of public policy or on matters affecting

the defence, military resources or diplomatic relations of the Virgin Islands with the prior approval of the Minister concerned;

- (d) make public or communicate to the media or cause to be made public or to be communicated to the media or to unauthorised persons, any documents, papers or information which may come into their possession in their official capacity or make private copies of those documents or papers;
- (e) give broadcast talks or engage in any discussion that is being broadcast on any subject that may properly be regarded as of a political or administrative nature, without the prior permission of the Minister concerned; or
- (f) disclose or produce in evidence any official document of a confidential character in any court of law without obtaining the previous permission of the Deputy Governor.

Other misconduct not specifically mentioned.

24. Any case of misconduct for which no provision is otherwise made by this Code shall be reported to the Director of Human Resources, who shall deal with the misconduct in a manner approved by the Commission.

Penalties.

25. A person who either

- (a) fails to comply with; or
- (b) engages in behaviour that is proscribed by
 - (i) the provisions of paragraphs 4(c), 6(2), 7, 9, 10(2), 14, 15, 17, 20, 21, 22 and 23 of the Code is guilty of misconduct that shall be regarded as a “misconduct of a serious nature” within the meaning of the Code of Discipline; and
 - (ii) the provisions of paragraphs 13(2), 16, and 18(1) is guilty of misconduct that shall be regarded as misconduct of a minor nature within the meaning of the Code of Discipline,

and is subject to the penalty for the misconduct as is specified in the Code of Discipline.

SCHEDULE APPENDIX 4

[Code 24(1)(b)]

CODE OF DISCIPLINE IN THE PUBLIC SERVICE**Interpretation.**

1. In this Code, unless the context otherwise requires,

“Code” means the Public Service Management Code, 2020;

“gross misconduct” means an act specified in Part B of the Table of Misconducts and Penalties, to this Code and attracts a corresponding penalty specified in that Schedule;

“Head of Department” includes Attorney General, Auditor General, Cabinet Secretary, Complaints Commissioner, Director of Public Prosecutions;

“minor misconduct” means an act specified in Part A of the Table of Misconducts and Penalties to this Code and attracts a corresponding penalty specified in that Schedule;

“misconduct” means minor or gross misconduct, as the case may be;

“Permanent Secretary” includes Financial Secretary;

“relevant Commission” means the Public Service Commission, the Teaching Service Commission or the Judicial and Legal Services Commission, as the case may be;

“Secretariat” means

- (a) in the case of the Public Service Commission, the Department of Human Resources, and
- (b) in the case of the Teaching Service Commission, the Department of Education;

“Secretary” means

- (a) in the case of the Public Service Commission or the Teaching Service Commission, a person who holds or acts in the office of Secretary to that Commission; or

- (b) in the case of the Judicial and Legal Services Commission, the person who serves as Secretary to that Commission.

Disciplinary proceedings.

2. An officer or employee who, without reasonable excuse, does an act or omission which

- (a) contravenes any provision of this Code or Code of Conduct and Ethics governing the conduct of officers or employees;
- (b) amounts to failure to perform in a proper manner any duty assigned to him or her including discourtesy to members of the public,

is liable to disciplinary proceedings for that misconduct in accordance with the provisions of this Code.

Criminal investigations.

3. (1) Notwithstanding the fact that an officer or employee is under investigation in respect of the commission of an offence leading to criminal charges or has been charged with an offence, disciplinary proceedings or action may be instituted or continued under this Code in relation to a breach of this Code or the Code of Conduct and Ethics.

(2) Where an officer or employee is charged with a criminal offence, the Permanent Secretary or Head of Department shall inform the relevant Commission through the Secretariat or Secretary of the charge and the Commission may recommend to the Governor that the officer or employee be interdicted on half pay until the determination of the charge.

(3) An officer or employee acquitted in any court of a criminal charge shall not be dismissed or otherwise punished in respect of that charge, but nothing in this paragraph shall prevent disciplinary proceedings being brought in accordance with the Code or Code in respect of any other lesser charge arising out of his or her conduct in the matter unless such other proceedings relate substantially to the same charge as that in respect of which he or she has been acquitted.

(4) An officer or employee who is under interdiction from duty may not leave the Territory without first notifying the Secretariat or Secretary of his or her intention to leave the Territory.

Reporting of alleged misconduct.

4. (1) An officer or employee who alleges misconduct by a Permanent Secretary or Head of Department may in writing, report the alleged misconduct to the Deputy Governor.

(2) Where, upon receipt of a report pursuant to subparagraph (1), the Deputy Governor is satisfied that there is merit to the report, he or she may within 14 days, notify in writing the Permanent Secretary or Head of Department against whom the allegation is made, and shall

- (a) send the report together with any supporting documentation;
- (b) make a recommendation as to whether or not disciplinary proceedings should be instituted;
- (c) recommend that a charge or charges be brought against the Permanent Secretary or Head of Department,

to the relevant Commission for its consideration.

(3) An officer or employee who alleges misconduct by another officer or employee may, in writing report the alleged misconduct to the officer's or employee's Permanent Secretary or Head of Department.

(4) Where, upon receipt of a report pursuant to subparagraph (3), a Permanent Secretary or Head of Department is satisfied that there is merit to the report, he or she may within 14 days, notify in writing, the officer or employee against whom the allegation is made, of the nature of the allegation, and shall, through the Director,

- (a) send the report together with any supporting documentation;
- (b) make a recommendation as to whether or not disciplinary proceedings should be instituted;
- (c) recommend that a charge or charges be brought against the officer or employee,

to the relevant Commission for its consideration.

(5) A report of an alleged act of misconduct by

- (a) a Permanent Secretary or Head of Department; or

- (b) an officer or employee

may in like manner, be made by a member of the public.

Investigative committee.

5. (1) Where a relevant Commission receives a report on

- (a) a Permanent Secretary or Head of Department; or
- (b) an officer or employee,

pursuant to paragraph 4, the relevant Commission may establish an investigative committee of three persons to investigate the alleged misconduct and to make a report to it.

(2) Subject to subparagraph (1), where a member of the investigative committee is an officer or employee, that member shall be the holder of an office which is at a grade higher than that of the officer or employee about whom the report is made.

(3) For purposes of subparagraph (1), each of the members selected to the investigative committee should be selected with due regard to the standing of the officer or employee concerned and to the nature of the allegations made against the officer or employee.

(4) Notwithstanding subparagraph (2), where the officer concerned is a Permanent Secretary or Head of Department, a member of the investigative committee may be an officer of the same grade as the Permanent Secretary or Head of Department, as the Commission determines.

(5) The investigative committee

- (a) is required to conclude an inquiry into the allegations within 1 month or such shorter period after the date of receipt of the request from the relevant Commission to investigate; and
- (b) shall submit a report of its findings to the relevant Commission not more than 14 days after completion of the inquiry, giving the opinion of the committee as to
 - (i) whether the allegation have merit and therefore that disciplinary proceedings can properly be instituted; and
 - (ii) the reasons for arriving at its opinion.

Institution of disciplinary proceedings.

6. (1) Where a relevant Commission receives a report on

- (a) a Permanent Secretary or Head of Department; or
- (b) an officer or employee,

pursuant to paragraph 4 or 5, considers that the report is sufficient to support charges being made against him or her, the relevant Commission shall notify that Permanent Secretary, Head of Department, officer or employee, in writing through the Secretariat or Secretary, the intent to institute disciplinary proceedings and communicate the nature of the charges to be brought and the relevant Commission shall commence disciplinary proceedings as soon as practicable and shall conclude such proceedings within 3 months of commencement.

(2) Where

- (a) a Permanent Secretary or Head of Department; or
- (b) an officer or employee,

is charged, a notification shall set out the nature and a brief statement of the allegations and the charges to be brought and all evidence presented to the relevant Commission and the Permanent Secretary, Head of Department, officer or employee shall be invited by the relevant Commission to state in writing within 7 days after receipt, any grounds on which he or she wishes to exculpate himself or herself.

(3) If the statement provided pursuant to sub paragraph (2) does not exculpate him or her of the charges, the relevant Commission will proceed to hear the matter.

(4) Where the

- (a) Permanent Secretary or Head of Department; or
- (b) officer or employee,

without good reason does not reply to the charges by the date specified in the notice, the relevant Commission shall assume that he or she does not wish to make a statement and shall therefore proceed to hear the matter.

(5) The Permanent Secretary, Head of Department, officer or employee shall be informed of the date, time and place of the hearing and may be represented, if he or she wishes, throughout the hearing by a representative from the civil service association, a legal practitioner or a personal representative.

(6) A Permanent Secretary, Head of Department, officer or employee shall be present at the hearing but if he or she is absent without reasonable excuse then, at the discretion of the relevant Commission, the hearing may proceed without the Permanent Secretary, Head of Department, officer or employee.

(7) Before the hearing begins, the relevant Commission shall allow the Permanent Secretary, Head of Department, officer or employee to provide a list of persons who he or she wishes to call as witnesses on his or her behalf and, he or she may if witnesses are called during the hearing cross-examine, personally or through his or her representative such witnesses.

(8) The relevant Commission may summon witnesses and cross-examine witnesses.

(9) The relevant Commission shall not more than 14 days after the completion of a hearing, submit to the Governor a written report which shall consist of

- (a) the record of the proceedings;
- (b) any documents or exhibits tendered in evidence;
- (c) its findings and give reasons for the findings; and
- (d) recommendations on the penalty to be imposed.

(10) The Governor shall on receipt of the relevant Commission's report, consider any findings and advice and when satisfied that each charge is established he or she shall impose a penalty, as appropriate.

(11) A Permanent Secretary, Head of Department, officer or employee shall be informed of the Governor's decision in writing through the Secretariat or Secretary.

(12) A Permanent Secretary, Head of Department, officer or employee who is not satisfied with a decision of the Governor, may appeal the decision to the Governor within 7 days of receipt of the decision only if he or she has new evidence that is relevant to the case which may exculpate him or her.

(13) A Permanent Secretary, Head of Department, officer or employee summoned as a witness before a relevant Commission who fails or refuses to

comply with a summons commits misconduct and may be subject to disciplinary action.

(14) Nothing in this Code, shall limit the power of the Judicial and Legal Services Commission to regulate its own procedure.

Supplementary charges.

7. If the relevant Commission considers that additional charges should be brought against a Permanent Secretary, Head of Department, officer or employee, then the same procedure as was adopted in making the original charges and the additional charges shall be brought before the conclusion of the hearing with respect to the original charges.

Types of penalties.

8. (1) The following penalties may be imposed for minor misconduct:

- (a) severe reprimand in the form of a written warning documented in the person's personal file;
- (b) suspension without pay for a period not exceeding 30 days;
- (c) demotion, except that this will not apply in the case of a Permanent Secretary;
- (d) termination of appointment with or without a reduction in retirement benefits, where applicable;
- (e) dismissal.

(2) The following penalties may be imposed for gross misconduct:

- (a) suspension from duty without pay for a period not exceeding 30 days;
- (b) demotion, except that this will not apply in the case of a Permanent Secretary;
- (c) termination of appointment with or without a reduction in retirement benefits, where applicable;
- (d) dismissal.

(3) When determining the types of penalties, due consideration shall be given to the severity of the breach and its consequences, the extent of authority of the

person being disciplined, the circumstances where under the breach were committed, and extenuating or aggravating circumstances for that person.

(4) Where a relevant Commission recommends that an officer or employee receive a penalty of demotion pursuant to subparagraphs (1)(c) and (2)(b), the demotion of the officer or employee may only be pronounced if there is an available post in the service.

(5) The statute of limitations on penalties for minor misconduct shall be 1 year and, for gross misconduct, 2 years except where the gross misconduct resulted in dismissal of the officer or employee then the statute of limitations shall be 5 years.

(6) After the period of prescription, the penalty for misconduct shall be expunged from the personnel record of the officer or employee provided that the officer or employee does not commit another breach of misconduct within that time.

Misconduct not provided for.

9. Misconduct not provided for under this Code or Code shall be referred to the relevant Commission through the Secretariat or Secretary, so that the Commission may consider it and, if thought fit, commence appropriate disciplinary proceedings in accordance with this Code with the necessary modifications to those provisions.

TABLE OF MISCONDUCTS AND PENALTIES

This Table provides a list of common breaches, along with a suggested range of penalties for each; it does not presume to cover all possible misconducts, nor does it mandate the use of specific penalties in most disciplinary situations. The range of penalties described in the Table is intended to serve as a guide to discipline, not a rigid standard, and deviations are allowable for a variety of reasons. Greater or lesser penalties than suggested may be imposed as circumstances warrant, and based on a consideration of mitigating and aggravating factors. Any penalty determination outside the suggested range should be based upon a reasonable consideration of the factors described in this Schedule, and the rationale documented in the decision.

The use of this Table as a guide will help to ensure appropriateness of penalty in relation to the charge(s), as well as relative consistency in discipline throughout the service. The fact that a particular misconduct is not listed in the Table does not mean that the officer or employee cannot be charged with that misconduct. In such instances, a reasonable penalty can be determined by a comparison to those misconducts listed in the Table.

The Table lists only disciplinary and adverse actions which become a matter of record in the officer's or employee's Personnel Record; it does not mention oral warnings, counselling notices, and other corrective actions which may be appropriate for correcting minor misconducts. The First Misconduct column, therefore, refers to the first misconduct for which a disciplinary/adverse action is taken, although it may not be the first time the officer or employee engaged in misconduct.

Progressively stronger corrective actions should be taken if an officer or employee repeatedly engages in misconduct. When an officer or employee receives corrective action for misconduct which falls under one range of penalties, and later commits a different misconduct under the same or another category of misconduct, the latter is considered a second misconduct for progressive disciplinary purposes. For example, if an officer or employee is charged with absence without leave and is issued an official reprimand (first misconduct), then is later charged with insubordination for subsequent misconduct, the appropriate penalty range for the insubordination charge is a 30-day suspension to dismissal (as a second misconduct).

An officer or employee also may be subject to criminal prosecution when there is evidence of possible criminal activity; such report should be provided to the Police for appropriate action. In addition, to any outcome pursuant to the investigation by the Police, an officer or employee involved in the alleged wrongdoing may be subject to an appropriate disciplinary action consistent with the penalties contained in this Table.

PART A

ACTS CONSTITUTING MINOR MISCONDUCT

| Nature of Minor Misconduct | Penalty for First Misconduct | Penalty for Second Misconduct | Penalty for Third Misconduct | Remarks |
|---|---|-------------------------------------|--|---|
| 1. Attendance-related misconducts. | | | | |
| a. Absence without leave. This includes tardiness and unauthorised delay in returning from lunch and break periods, or in returning after | Written Reprimand to 5-day suspension without pay | 5- to 30-day suspension without pay | 30-day suspension without pay to dismissal | Demotion may be appropriate for a first or second misconduct if the absence is prolonged, the failure to adhere to leave procedures is flagrant, or the |

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| <p>leaving work station on official business; unauthorised departure or absence from duty station.</p> <p>b. Failure to follow established leave procedures; failure to provide administratively acceptable documentation to support absence(s).</p> <p>c. Excessive unauthorised absences (e.g., more than 5 consecutive workdays).</p> | <p>Written Reprimand to 5-day suspension without pay</p> <p>5-day suspension to dismissal</p> | <p>5- to 30-day suspension without pay</p> <p>14-day suspension to dismissal</p> | <p>30-day suspension without pay to dismissal</p> <p>Dismissal</p> | <p>circumstances are otherwise particularly burdensome.</p> |
| <p>2. Improper or unauthorised release of sensitive and administratively-controlled information or officer or employee records; failure to safeguard classified material.</p> <p>a. Information is not compromised and release is unintentional.</p> <p>b. Information is compromised and release is unintentional.</p> <p>c. Release of</p> | <p>Written Reprimand to 5-day suspension without pay</p> <p>Written Reprimand to 30-day suspension</p> <p>30-day</p> | <p>5- to 30-day suspension without pay</p> <p>30-day suspension to dismissal</p> <p>Dismissal</p> | <p>30-day suspension without pay to dismissal</p> <p>Dismissal</p> | <p>Deliberate disclosures of information may be offences under any enactment prohibiting same.</p> |

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| restricted information is deliberate. | suspension to dismissal | | | |
| 3. Misconducts related to substance abuse. a. Alcohol-related (i) Reporting to or being on duty while "under the influence" of alcohol. (ii) Unauthorised use and/or possession of alcoholic beverages while on Government premises (or vehicle). (iii) Operating a Government vehicle while "under the influence" of alcohol. b. Drug-related (i) Administratively confirmed positive finding under the testing portion of the Drug-Free Workplace Program. (ii) Unlawful use, being under the influence or unauthorised | Written Reprimand to 5-day suspension without pay Written Reprimand to 30-day suspension without pay 30-day suspension without pay to dismissal Written Reprimand to dismissal Written Reprimand to dismissal | 5- to 30-day suspension without pay 30-day suspension to dismissal Dismissal Dismissal 30-day suspension to dismissal | 30-day suspension without pay to dismissal Dismissal Dismissal Dismissal | Refer to Drug-Free Workplace (Zero Tolerance) Policy, Handbook on the Alcohol and Drug Testing Program, for specific guidance. Actions involving these misconducts must assure that counselling or rehabilitative assistance is offered; however, referral to an officer or employee to an assistance program (EAP) does not preclude the initiation of corrective action. The illegal drugs to be tested for include: marijuana, cocaine, opiates, |

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| possession of drugs, drug paraphernalia or controlled substance while on Government premises or in a duty status. | | | | amphetamines and phencyclidine (PCP). However, the service is authorised to test for any illegal drugs as deemed necessary. |
| (iii) Sale or transfer of an illegal drug or controlled substance while on Government premises (or vehicle). | Dismissal | 30-day suspension without pay to dismissal | | When there is possession of illegal drugs – refer the matter to the police. |
| (iv) Refusal or failure to provide a required specimen for drug-testing; tampering with a drug-test specimen; refusal to obtain counselling or rehabilitation (after finding of illegal drug use). | 14-day suspension without pay to dismissal | | | When the substance is prescribed by an appropriate medical authority and used accordingly, it would not be a misconduct. A second misconduct of failing to refrain from illegal drug use may be grounds for dismissal from service for |
| 4. Discourteous conduct (e.g., rude, insolent, disgraceful acts or remarks) toward supervisors, co- workers, or the public. | Written Reprimand to 5-day suspension without pay | 5- to 30-day suspension without pay | 30-day suspension without pay to dismissal | 14 days or less of suspension without pay of any officer or employee with four documented instances of discourteous |

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| | | | | <p>conduct toward the public within a one-year period as confirmed by an immediate supervisor, or any other pattern of discourteous conduct is allowable.</p> <p>Demotion may be appropriate for a first or second misconduct if, the failure to adhere to procedures is flagrant, or the circumstances are otherwise particularly burdensome.</p> |
| <p>5. Boisterous or disruptive/disorderly conduct; use of insulting, intimidating, abusive or offensive language to or about another officer or employee or supervisor.</p> | <p>Written Reprimand to 5-day suspension without pay</p> | <p>5- to 30-day suspension without pay</p> | <p>30-day suspension without pay to dismissal</p> | <p>Demotion may be appropriate for a first or second misconduct if, the failure to adhere to procedures is flagrant, or the circumstances are otherwise particularly burdensome.</p> |
| <p>6. Deliberately making known false, malicious, or unfounded statements against co-workers, supervisors, subordinates, or</p> | <p>Written Reprimand to dismissal</p> | <p>14-day suspension without pay to dismissal</p> | <p>30-day suspension without pay to dismissal</p> | |

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|---|--|--|--|---|
| Government officials which could undermine the authority or damage the reputation of those concerned. | | | | |
| 7. Threatening statements or behaviour (of a physical nature). | 14-day suspension without pay to dismissal | Dismissal | | Charge involving "threat" must consider the listener's reactions, the listener's apprehension of harm, the speaker's intent, any conditional nature of the statements, and the attendant circumstances. |
| 8. Fighting and misconducts related to fighting. | | | | Penalty depends on such factors as provocation, extent of injuries, and whether actions were defensive or offensive in nature. |
| a. Engaging in potentially dangerous "horseplay." | Written Reprimand to 14-day suspension without pay | 14-day suspension without pay to dismissal | 30-day suspension without pay to dismissal | |
| b. Hitting, pushing, or other acts against another without causing injury. | 5- to 30-day suspension without pay | 30-day suspension without pay to dismissal | Dismissal | |
| c. Hitting, pushing, or other acts against another causing injury. | 30-day suspension without pay to dismissal | Dismissal | | |

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|---|--|--|-----------|---|
| 9. Misconduct of a sexual nature that includes, but is not limited to, unwelcome sexual remarks, indecent comments/jokes, offensive sexual banter, unwanted sexual advances, or unwelcome physical touching. | Written Reprimand to dismissal | 14-day suspension without pay to dismissal | Dismissal | Refer to the Zero Tolerance Policy; penalty may include mandatory training. More severe discipline is appropriate for egregious misconduct. |
| | Range of Penalties If Committed by a Line Manager | | | |
| | 5-day suspension without pay to dismissal | 14-day suspension without pay to dismissal | Dismissal | Refer to the Zero Tolerance Policy; penalty may include mandatory training. More severe discipline is appropriate for egregious misconduct. |
| 10. Failure to provide equal opportunity regardless of race, colour, religion, gender, national origin, age, marital status, political affiliation, sexual orientation or handicapping condition. | Written Reprimand to dismissal | 14-day suspension without pay to dismissal | Dismissal | Refer to |
| | Range of Penalties If Committed by a Line Manager | | | |
| | 5-day suspension without pay to dismissal | 14-day suspension without pay to dismissal | Dismissal | Refer toand related Department policies. Action may be taken regardless of whether there was an official "finding" of discrimination (or other prohibited |

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|--|--|--|--|---|
| | | | | personnel practice). |
| 11. Failure to comply with safety regulations, instructions or prescribed safe practices; failure to use proper safety equipment; failure to report accident or injury. | Written Reprimand to 14-day suspension without pay | 14- to 30-day suspension without pay | 30-day suspension without pay to dismissal | |
| 12. Sleeping or loafing while on duty; inattention to duty; wilful idleness while on duty. | Written Reprimand to 5-day suspension without pay | 5-to 14-day suspension without pay | 14-day suspension without pay to dismissal | Seriousness of misconduct is greater if persons/property endangered. |
| 13. Failure or delay in carrying out instructions; failure or carelessness in performing assigned work; failure to take/complete officially-directed training. | Written Reprimand to 14-day suspension without pay | 14-to 30-day suspension without pay | 30-day suspension without pay to dismissal | Demotion may be appropriate for a first or second misconduct if, the failure to adhere to procedures is flagrant, or the circumstances are otherwise particularly burdensome. |
| 14. Insubordination; disregard of directive; refusal to comply with a proper order. | 5-day suspension without pay to dismissal | 30-day suspension without pay to dismissal | Dismissal | An "insubordination" charge requires a showing that the officer or employee deliberately disregarded supervisory |

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| | | | | directives. In some instances (e.g., refusal to report for an ordered reassignment) may be appropriate. |
| 15. Refusal to testify or cooperate in connection with any administrative investigation, inquiry, or other proper proceeding (when criminal charges are not anticipated). | 5-day suspension without pay to dismissal | 14-day suspension without pay to dismissal | 30-day suspension without pay to dismissal | |
| 16. Prohibited/improper use of Government property (e.g., office equipment; supplies; facilities; credentials; records; communication resources; cellular phones; official time); misuse of the Internet/electronic mail; using the Internet/electronic mail for unauthorised purposes including unauthorised recording or monitoring of telephone calls, conversations or meetings. | Written Reprimand to 14-day suspension without pay More severe discipline (including dismissal) may be appropriate for first/second misconduct if misconduct involves using the Department's Internet/electronic mail system for prohibited reasons, including gambling, accessing/sending | 14- to 30-day suspension without pay More severe discipline (including dismissal) may be appropriate for first/second misconduct if misconduct involves using the Department's Internet/electronic mail system for prohibited reasons, including | 30-day suspension without pay to dismissal | Demotion may be appropriate for a first or second misconduct if, the failure to adhere to procedures is flagrant, or the circumstances are otherwise particularly burdensome. |

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| | prohibited sexually-related material, or other egregious acts of misuse. | gambling, accessing/sending prohibited sexually-related material, or other egregious acts of misuse. | | |
| 17. Indebtedness; failure to meet financial obligations in a proper and timely manner. | Written Reprimand to 5-day suspension without pay | 5-to 14-day suspension without pay | 14-day suspension without pay to dismissal | Referral to EAP may be appropriate. Since a suspension without pay may reduce an officer's or employee's ability to pay overdue financial obligations, Special care is called for in dealing with this type of misconduct, as it may involve mitigating circumstances. |
| Range of Penalties If Committed by a Line Manager | | | | |
| | Written Reprimand to 14-day suspension without pay | 14 to 30-day suspension without pay | Dismissal | |
| 18. Misconducts related to Government charge card and/or purchase card. a. Misuse of card (i.e., personal/unauthoris | Written Reprimand to 30-day suspension without pay | 5-day suspension without pay to dismissal | 30-day suspension without pay to dismissal | Demotion may be appropriate for a first or second misconduct if, the failure to adhere to procedures is |

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|---|--|--|-----------|---|
| ed purchases) or delinquent in payment. | 5- to 30-day suspension without pay | 14-day suspension without pay to dismissal | Dismissal | flagrant, or the circumstances are otherwise particularly burdensome. |
| b. Misuse of travel card (i.e., personal/unauthorised purchases) and delinquent in payment. | Written Reprimand to 30-day suspension without pay | 14-day suspension without pay to dismissal | Dismissal | |
| c. Unauthorised use of or failure to appropriately monitor use of Government purchase card; "micro-purchasing" violations. | | | | |
| 19. Participating in matters affecting financial interests of an entity where employment is being sought. | 5-day suspension without pay to dismissal | Dismissal | | Referral to EAP may be appropriate. |
| 20. Violating the Code of Conduct and Ethics not covered elsewhere in this Table. | Written Reprimand to dismissal | 14-day suspension without pay to dismissal | Dismissal | |
| 21. Neglecting to recommend/take corrective action upon receipt of information regarding the job-related misconduct of a subordinate officer or employee. | Written Reprimand to 30-day suspension without pay | 14-day suspension without pay to dismissal | Dismissal | This misconduct applies to persons in supervisory positions. |
| 22. Influencing or attempting to influence to a member of a Commission, with respect to a decision on any | 5- to 30-day suspension without pay | 14-day suspension without pay to dismissal | Dismissal | |

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| matter that the Commission may be dealing with. | | | | |
| 23. Using Government officers or employees in duty status for other than official purposes. | Written Reprimand to dismissal | 14-day suspension without pay to dismissal | 30-day suspension without pay to dismissal | <p>This misconduct refers to persons in supervisory positions.</p> <p>Demotion may be appropriate for a first or second misconduct if, the failure to adhere to procedures is flagrant, or the circumstances are otherwise particularly burdensome.</p> |

PART B

ACTS CONSTITUTING GROSS MISCONDUCT

| Nature of Gross Misconduct | Penalty for First Misconduct | Penalty for Second Misconduct | Penalty for Third Misconduct | Remarks |
|---|--|--|------------------------------|--|
| 1. Engaging in prohibited political activity (e.g., campaigning; canvassing; wearing or displaying political affiliated material; soliciting/receiving political contributions). | 30-day suspension without pay to dismissal | Dismissal | | |
| 2. Participating in a strike, work stoppage, work slowdown, sick-out, or other similar job action contrary to the relevant laws. | 30-day suspension without pay to dismissal | Dismissal | | Labour Code, Trade Unions Act, CAP. 300. |
| 3. Misappropriating/misapplying Government funds; directing, expecting, or rendering services not covered by appropriations. | 1-to 30-day suspension without pay | 30-day suspension without pay to dismissal | Dismissal | Refer to PFMA. |
| 4. Wilfully mutilating or destroying a public record. | Dismissal | | | |
| 5. Wilfully using or authorising the use of a Government vehicle for other than official purposes. | 30-day suspension without pay to dismissal | Dismissal | | |
| 6. Engaging in actions against | 30-day suspension | Dismissal | | . |

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| national security. | without pay to dismissal | | | |
| 7. Using public office for private gain. | 5-day suspension without pay to dismissal | Dismissal | | Referral to EAP may be appropriate. |
| 8. Engaging in unauthorised/prohibited selling, soliciting or fundraising activities. | Written Reprimand to 5-day suspension without pay | 5-to 14-day suspension without pay | 14-day suspension without pay to dismissal | Referral to EAP may be appropriate. |
| 9. Engaging in prohibited outside employment or private business activities. | Written Reprimand to dismissal | Dismissal | | Referral to EAP may be appropriate. |
| 10. Participating in particular matters while having a conflicting financial interest. | 5-day suspension without pay to dismissal | Dismissal | | Referral to EAP may be appropriate. |
| 11. Engaging (on-duty or off-duty) in criminal, infamous, dishonest, or notoriously disgraceful conduct prejudicial to the Government. | 5-day suspension without pay to dismissal | 30-day suspension without pay to dismissal | Dismissal | |
| 12. Misconducts related to gambling. a. Participating in a gambling activity while on Government premises or in a duty status (e.g., office pools). b. Operating, assisting, or promoting a gambling | Written Reprimand to 14-day suspension without pay 5- to 30-day suspension without pay | 14- to 30-day Suspension without pay 30-day suspension without pay to dismissal | 30-day suspension without pay to dismissal Dismissal | Referral to EAP may be appropriate. |

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| activity while on Government premises or in a duty status or while others involved are in a duty status. | | | | |
| 13. Falsification/misrepresentation of official Government records or documents including, but not limited to, time and attendance records, travel vouchers, job applications, performance appraisals, claims for benefits, and other employment-related documents. | Written Reprimand to dismissal | 30-day suspension without pay to dismissal | Dismissal | Referral to EAP may be appropriate. |
| 14. Misrepresentation, falsification, exaggeration, concealment or withholding of material fact in connection with an official Government investigation, inquiry or other administrative proceeding. | 14-day suspension without pay to dismissal | 30-day suspension without pay to dismissal | Dismissal | Referral to EAP may be appropriate. |
| 15. Unauthorised possession/sale (actual or attempted) of Government property or property of others; improper acceptance of Government funds/reimbursement. | Written Reprimand to dismissal | 14-day suspension without pay to dismissal | 30-day suspension without pay to dismissal | Referral to the Financial Secretary may be appropriate. (Check PFMA) |
| 16. Loss, misuse of, | Written | 14- to 30- | 30-day | Referral to |

| | | | | |
|--|--|--|-------------------------------------|--|
| damage to or failure to safeguard Government property , records, or information (e.g., wilful or negligent damage to Government resources; carelessness in performance of duty resulting in waste of public funds). | Reprimand to 14-day suspension without pay | day suspension without pay | suspension without pay to dismissal | the Financial Secretary may be appropriate. (Check PFMA) |
| | Range Of Penalties If Committed by a Line Manager | | | |
| | Written Reprimand to 14-day suspension without pay | 14-day suspension without pay to dismissal | Dismissal | Check relevance of PFMA |
| 17. Unauthorised use of non-public information. | Written Reprimand to dismissal | Dismissal | | Referral to EAP may be appropriate. |
| 18. Taking reprisal action against an officer or employee for exercising rights provided by law. | 5- to 30-day suspension without pay | 14-day suspension without pay to dismissal | Dismissal | This misconduct applies to persons in supervisory positions. |
| 19. Carrying a firearm or other weapon on Government property (or in Government vehicle) unless specifically authorised/required in the performance of duties. | 30-day suspension without pay to dismissal | Dismissal | | Referral to EAP may be appropriate. |

SCHEDULE APPENDIX 5

[Codes 59 and 64]

GRIEVANCE PROCEDURE**A. INTERPRETATION**

In this procedure, unless the context otherwise requires,

“Association” means the association referred to in Chapter XXII of the Code;

“Code” means the Public Service Management Code, 2020;

“Constitution” means the Virgin Islands Constitution Order, 2007 (U.K.S.I. No. 1678 of 2007);

“days” has the meaning assigned to it in code 2 of the Code;

“grievance” means a dissatisfaction regarding an official act or omission by the Permanent Secretary or Head of Department which adversely affects an officer or employee in the employment relationship, excluding an alleged unfair dismissal;

“Head of Department” has the meaning assigned to it in code 2 of the Code;

“Judicial and Legal Services Commission” has the meaning assigned to it in code 2 of the Code;

“Public Service” or “service” has the meaning assigned to it in code 2 of the Code;

“Public Service Commission” has the meaning assigned to it in code 2 of the Code;

“relevant Commission” or “Commission” has the meaning assigned to it in code 2 of the Code;

“resolve” means to settle a grievance to the satisfaction of the aggrieved officer or officer or employee;

“representative” means a fellow officer or officer or employee, a representative of the association; and

“Teaching Service Commission” has the meaning assigned to it in code 2 of the Code.

B. PURPOSE AND APPLICATION

1. The purpose of this Grievance Procedure is to advance sound labour relations and address grievances in the service by fulfilling the primary objectives of this procedure which are

- (a) to give effect to code 64 of the Public Service Management Code, 2020, in relation to grievance handling;
- (b) to promote
 - (i) speedy, impartial and equitable handling of grievances;
 - (ii) sound labour relations;
 - (iii) resolution of individual grievances at the lowest possible level in a ministry or department.

C. MANAGING A GRIEVANCE

1. A grievance shall as far as possible be resolved by a Permanent Secretary or Head of Department and as close to the point of origin as possible.

2. The Permanent Secretary or Head of Department shall ensure that the grievance is dealt with in a fair, impartial and unbiased manner, and that the principles of natural justice are observed.

3. The procedure shall be such that it assists and enables a Permanent Secretary or Head of Department and an officer or employee to address a dissatisfaction.

4. No officer or employee shall not be victimised or prejudiced, directly or indirectly as a result of lodging a grievance.

5. If disciplinary action is being taken against an officer or employee, utilisation of this procedure by the officer or employee to address any matter related to the disciplinary action shall not halt the disciplinary procedure.

6. A grievance shall be lodged in writing and all decisions taken during the process shall be in writing.

7. An officer or employee may be assisted by a representative.

D. ADHERENCE TO TIME LIMITS

1. In determining adherence to time limits, this should be calculated by excluding the first day and including the last day.
2. The parties shall adhere to the time limits set out in this procedure, unless they mutually agree to extend them.
3. A grievance shall be lodged with the Permanent Secretary or Head of Department within 30 days from the date on which the officer or employee became aware of the act or omission which adversely affects him or her.
4. An officer or employee may demand that his or her grievance be referred to a relevant Commission within 10 days after receiving the decision of a Permanent Secretary or Head of Department.

E. PROVISION OF INFORMATION

1. A Permanent Secretary or Head of Department shall provide all relevant information necessary for an officer or employee to lodge or pursue a grievance, if requested.
2. The provision of such information is subject to any limitations imposed by law.
3. The officer or employee shall be provided with information about the status of the grievance and the progress made towards the planned finalisation date.
4. The Permanent Secretary or Head of Department shall provide the officer or employee with a copy of the grievance form after each applicable level of authority has dealt with the grievance.

F. MINISTERIAL OR DEPARTMENTAL STAGES TO ADDRESS A GRIEVANCE

1. An officer or employee may lodge a grievance with a Permanent Secretary or Head of Department to facilitate the resolution of grievances in the ministry or department.
2. The prescribed form at Annexure shall be used when a grievance is lodged.

3. The Permanent Secretary or Head of Department shall liaise with the Director of Human Resources in an attempt to resolve the grievance.

4. The aggrieved officer or employee shall be duly informed by the Permanent Secretary or Head of Department about the status and progress made towards the resolution of the grievance.

5. If the grievance is resolved to the satisfaction of the aggrieved officer or employee the confirmation thereof shall be reduced to writing by the Permanent Secretary or Head of Department.

6. If a grievance cannot be resolved, the Permanent Secretary or Head of Department shall inform the aggrieved officer or employee accordingly.

7. The Permanent Secretary or Head of Department has 30 days to deal with the grievance. The period may be extended by mutual agreement in writing.

8. If after the aggrieved officer or employee is informed of the outcome of the grievance and he or she remains dissatisfied

(a) he or she shall inform the Permanent Secretary or Head of Department thereof in writing within 10 days;

(b) the Permanent Secretary or Head of Department shall forward the grievance and the relevant documentation to the relevant Commission for a recommendation within 5 days of being informed by the aggrieved officer or employee.

9. If there is failure on the part of the ministry or department to respond to the grievance within the period referred to in paragraph 7, the aggrieved officer or employee may lodge his or her grievance with a relevant Commission directly.

G. REFERRAL TO THE RELEVANT COMMISSION

1. Once the relevant Commission has received all the information from the Permanent Secretary or Head of Department, it shall within 30 days consider such grievance and inform the Permanent Secretary or Head of Department of its recommendation and the reasons for its decision in writing.

2. On receipt of the relevant Commission's recommendation, the Permanent Secretary or Head of Department shall, within 5 days, inform the officer or employee and the relevant Commission of his or her decision in writing.

H. GRIEVANCES OF PERMANENT SECRETARIES OR HEADS OF DEPARTMENT

1. If a Permanent Secretary or Head of Department has a grievance, he or she may submit the grievance to the Deputy Governor.
2. The Deputy Governor has 30 days to deal with the grievance. The period may be extended by mutual agreement.
3. Paragraph 8 shall, apply with the necessary modifications, to all grievances of Permanent Secretaries or Heads of Department.

I. EVALUATION

The Permanent Secretary or Head of Department shall ensure that grievance resolution is evaluated by maintaining a record of the number of grievances resolved from the beginning of each calendar year and report to the relevant Commission annually.

J. TRANSITIONAL MEASURES

A grievance lodged before the coming into force of this Grievance Procedure shall be dealt with and concluded in terms of this Grievance Procedure.

Annexure



GRIEVANCE APPEAL FORM

| GRIEVANT INFORMATION | |
|-------------------------------|---------------------------|
| GRIEVANT NAME | DATE APPEAL SUBMITTED |
| | |
| GRIEVANT PHONE | GRIEVANT EMAIL |
| | |
| GRIEVANT HOME MAILING ADDRESS | WORKPLACE MAILING ADDRESS |
| | |
| RECEIVED BY | DATE RECEIVED |
| | |

| |
|--|
| REASON FOR APPEAL (check all that apply): |
| <input type="checkbox"/> New information/evidence is now available that wasn't considered before |

| | |
|--------------------------|--|
| <input type="checkbox"/> | The process wasn't followed correctly |
| <input type="checkbox"/> | The outcome wasn't fair and reasonable |

FURTHER EXPLANATION OF REASONING use attachments if necessary

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DESIRED OUTCOME use attachments if necessary

| |
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| |
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Please retain a copy of this form for your own records. As the grievant, your signature below indicates that the information you've provided on this form is truthful.

SIGNATURES

| GRIEVANT SIGNATURE | DATE |
|---|------|
| | |
| RECEIVED BY: PRINTED NAME AND SIGNATURE | DATE |
| | |

GRIEVANCE FORM

| GRIEVANT INFORMATION | |
|------------------------------|-------------------------|
| GRIEVANT NAME | DATE FORM SUBMITTED |
| | |
| JOB TITLE | DATE GRIEVANCE OCCURRED |
| | |
| WORK TELEPHONE NO. with EXT. | HOME TELEPHONE NO. |
| | |
| WORK EMAIL ADDRESS | HOME EMAIL ADDRESS |
| | |
| WORKPLACE MAILING ADDRESS | HOME MAILING ADDRESS |
| | |

| DEPARTMENT INFORMATION | |
|--|---|
| DEPARTMENT NAME | MINISTRY NAME |
| | |
| GRIEVANT IMMEDIATE SUPERVISOR NAME AND TITLE | GRIEVANT IMMEDIATE SUPERVISOR PHONE AND EMAIL |
| | |

Grievances must be submitted within 30 calendar days of the date the employee knew or should have known of the issue being grieved.

| | |
|--------------------------|--|
| <input type="checkbox"/> | Check if you decided not to present this grievance to your immediate supervisor because (check one): |
| <input type="checkbox"/> | Discrimination or Retaliation by Immediate Supervisor |
| <input type="checkbox"/> | Grieving disciplinary action issued by someone other than Immediate Supervisor |

| DETAILS OF EVENT LEADING TO GRIEVANCE |
|---------------------------------------|
| DATE, TIME, AND LOCATION OF EVENT |
| |
| WITNESSES if applicable |
| |

ACCOUNT OF EVENT use attachments if necessary

Provide a detailed account of the occurrence. Include the names of any additional persons involved.

VIOLATIONS use attachments if necessary

Provide a list of any policies, procedures, or guidelines you believe have been violated in the event described.

PROPOSED SOLUTION use attachments if necessary

Please retain a copy of this form for your own records. As the grievant, your signature below indicates that the information you've provided on this form is truthful.

SIGNATURES

| GRIEVANT NAME | GRIEVANT SIGNATURE | DATE |
|---------------|--------------------|------|
| | | |

| RECEIVER NAME | RECEIVER SIGNATURE | DATE |
|---------------|--------------------|------|
| | | |

| SUBMISSION PROCESS | |
|---|---|
| COMPLETED FORMS SHOULD BE SUBMITTED TO IMMEDIATE SUPERVISOR. PLEASE SUBMIT A COPY TO THE DIRECTOR OF HUMAN RESOURCES. | IN THE CASE OF BYPASSING IMMEDIATE SUPERVISOR, PLEASE SUBMIT COMPLETED FORM TO THE HEAD OF DEPARTMENT OR PERMANENT SECRETARY. IF THE GRIEVANT'S IMMEDIATE SUPERVISOR IS A PERMANENT SECRETARY, SUBMIT THE COMPLETED FORM TO THE DEPUTY GOVERNOR. PLEASE SUBMIT A COPY TO THE DIRECTOR OF HUMAN RESOURCES. |
| | |

| RESOLUTION STEP 1 – RESPONDENT | |
|--|-------------------------|
| STEP 1 RESPONDENT NAME | DATE RECEIVED |
| | |
| STEP 1 RESPONDENT PHONE with EXT. | STEP 1 RESPONDENT EMAIL |
| | |
| RESPONSE use attachments if necessary | |

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| |
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| STEP 1 RESPONDENT SIGNATURE | DATE |
|-----------------------------|------|
| | |

| RESOLUTION STEP 1 – GRIEVANT | |
|--|---------------|
| GRIEVANT NAME | DATE RECEIVED |
| | |
| GRIEVANT COMMENTS OPTIONAL use attachments if necessary | |
| | |

The officer or employee is responsible for having the grievance delivered to the proper person or office within five workdays.

| | |
|--------------------------|--|
| <input type="checkbox"/> | GRIEVANT RESPONSE (check one): |
| <input type="checkbox"/> | I conclude my grievance and am returning it to the Human Resources Department. |
| <input type="checkbox"/> | I advance my grievance to Step 2. |

| GRIEVANT SIGNATURE | DATE |
|--------------------|------|
| | |

| RESOLUTION STEP 2 – RESPONDENT | |
|--------------------------------|---------------|
| STEP 2 RESPONDENT NAME | DATE RECEIVED |

| | |
|--|--------------------------------|
| | |
| STEP 2 RESPONDENT PHONE with EXT. | STEP 2 RESPONDENT EMAIL |
| | |
| RESPONSE use attachments if necessary | |
| | |

| | |
|------------------------------------|-------------|
| STEP 2 RESPONDENT SIGNATURE | DATE |
| | |

| | |
|--|----------------------|
| RESOLUTION STEP 2 – GRIEVANT | |
| GRIEVANT NAME | DATE RECEIVED |
| | |
| GRIEVANT COMMENTS OPTIONAL use attachments if necessary | |
| | |

The officer or employee is responsible for having the grievance delivered to the proper person or office within five workdays.

| | |
|--------------------------|--|
| <input type="checkbox"/> | GRIEVANT RESPONSE (check one): |
| <input type="checkbox"/> | I conclude my grievance and am returning it to the Human Resources Department. |
| <input type="checkbox"/> | I advance my grievance to Step 3. |

| GRIEVANT SIGNATURE | DATE |
|--------------------|------|
| | |

| RESOLUTION STEP 3 – RESPONDENT | |
|---------------------------------------|-------------------------|
| STEP 3 RESPONDENT NAME | DATE RECEIVED |
| | |
| STEP 3 RESPONDENT PHONE with EXT. | STEP 3 RESPONDENT EMAIL |
| | |
| RESPONSE use attachments if necessary | |
| | |

| STEP 3 RESPONDENT SIGNATURE | DATE |
|-----------------------------|------|
| | |

| RESOLUTION STEP 3 – GRIEVANT | |
|---|---------------|
| GRIEVANT NAME | DATE RECEIVED |
| | |
| GRIEVANT COMMENTS OPTIONAL use attachments if necessary | |
| | |

The employee is responsible for having the grievance delivered to the proper person or office within five workdays.

| | |
|--------------------------|--|
| <input type="checkbox"/> | GRIEVANT RESPONSE (check one): |
| <input type="checkbox"/> | I conclude my grievance and am returning it to the Human Resources Department. |
| <input type="checkbox"/> | I advance my grievance to the next step and request qualification of my grievance for hearing. |

| GRIEVANT SIGNATURE | DATE |
|--------------------|------|
| | |

GRIEVANCE FORM



| QUALIFICATION FOR HEARING – RELEVANT COMMISSION | |
|---|---------------------------|
| CHAIRPERSON, RELEVANT COMMISSION | DATE RECEIVED |
| | |
| RELEVANT COMMISSION PHONE with EXT. | RELEVANT COMMISSION EMAIL |
| | |

| QUALIFICATION FOR A HEARING (check one): | |
|--|---|
| <input type="checkbox"/> | Grievance is qualified in full. |
| <input type="checkbox"/> | Grievance is qualified only in part, as described by agency head below (or in an attachment). |
| <input type="checkbox"/> | Grievance is not qualified. |

| REASONS use attachments if necessary |
|--------------------------------------|
| |

| CHAIRPERSON, RELEVANT COMMISSION SIGNATURE | DATE |
|--|------|
| | |

| QUALIFICATION FOR HEARING – GRIEVANT | |
|---|---------------|
| GRIEVANT NAME | DATE RECEIVED |
| | |
| GRIEVANT COMMENTS OPTIONAL use attachments if necessary | |
| | |

This form must be returned to the Human Resources Department within five workdays after receipt of the relevant Commission's qualification decision. The relevant Commission will retain the original.

| | |
|--------------------------|---|
| <input type="checkbox"/> | GRIEVANT RESPONSE (check one): |
| <input type="checkbox"/> | I conclude my grievance and am returning it to the Human Resources Department. |
| <input type="checkbox"/> | I appeal the relevant Commission's qualification decision and ask the Human Resources Department to forward the grievance record to the Governor. |
| <input type="checkbox"/> | [If partial qualification] I waive any further right of appeal on any unqualified issues and request an appointment for a hearing with the relevant Commission. |

| GRIEVANT SIGNATURE | DATE |
|--------------------|------|
| | |

Made by the Governor this day of , 2021.